

BEFORE THE  
ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION

IN THE MATTER OF )  
JOSEPH DeSIMONE, et al. ) FILE NO. 8695  
\_\_\_\_\_ )

EXAMINATION UNDER OATH OF JOSEPH DESIMONE

Phoenix, Arizona  
July 25, 2018



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Prepared By:  
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Certified Reporter  
Certificate No. 50192

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NO.

DESCRIPTION

MARKED IDENTIFIED

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6/2/2017 letter/subpoena  
to Mr. DeSimone from ACC

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6/20/2017 letter/response  
to subpoena from  
Mr. DeSimone to ACC  
(ACC000336-346)

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1           EXAMINATION UNDER OATH OF JOSEPH DESIMONE  
2   was taken on July 25, 2018, commencing at 10:11 a.m.,  
3   at the offices of the Arizona Corporation Commission,  
4   Securities Division, 1300 West Washington Street, Third  
5   Floor, Phoenix, Arizona, before Jody L. Lenschow, RMR,  
6   CRR, Certified Reporter No. 50192 for the State of  
7   Arizona.

8

9

\*       \*       \*

10   APPEARANCES:

11           For The Arizona Corporation Commission  
12           Securities Division:  
13           ARIZONA CORPORATION COMMISSION SECURITIES DIVISION  
14           By: Mr. James Burgess, Enforcement Attorney  
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23           For the Respondents:  
24           CHESTER & SHEIN, P.C.  
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26

27   ALSO PRESENT: Ms. Shannon Nelson, Investigator III,  
28                   Securities Division

29

30

1 JOSEPH DESIMONE,  
2 called as a witness herein, having been first duly  
3 sworn by the Certified Court Reporter to speak the  
4 truth and nothing but the truth, was examined and  
5 testified as follows:

6

7 EXAMINATION

8 BY MR. BURGESS:

9 Q. Good morning. This is part of an inquiry by  
10 the Securities Division of the Arizona Corporation  
11 Commission in the matter of Joseph DeSimone, et al.,  
12 Enforcement File No. 8695, in order to determine if  
13 there has been full compliance with the Securities Act  
14 of Arizona and/or the Arizona Investment Management  
15 Act. The information obtained today may reveal  
16 violations of statutes outside of these two Acts.

17 Persons present are myself, I'm James  
18 Burgess. I go by Jamie, counsel for the Securities  
19 Division, along with Margaret Lindsey, who is also  
20 counsel for the Securities Division, and Investigator  
21 Shannon Nelson.

22 Sir, please identify yourself.

23 A. I'm Joseph DeSimone.

24 Q. Nice to meet you.

25 A. Nice to meet you.

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1 MR. BURGESS: And, Mr. Chester, can you  
2 announce for the record?

3 MR. CHESTER: Yes. Mark Chester,  
4 Chester & Shein, counsel for Mr. DeSimone.

5 MR. BURGESS: Mr. Chester, do you  
6 represent any other persons or entities, such as  
7 DeSimone Blue Chip Planning, LLC or I don't know if  
8 there's a Mrs. DeSimone, but do you represent anybody  
9 other than Mr. DeSimone individually?

10 MR. CHESTER: No individuals. I do  
11 represent his LLC.

12 MR. BURGESS: Okay.

13 BY MR. BURGESS:

14 Q. Mr. DeSimone, you have the right to refuse to  
15 answer any questions if you think the answer may tend  
16 to incriminate you. You have the right to refuse to  
17 produce any private papers you may feel that tend to  
18 incriminate you. You do not have the right to refuse  
19 to produce any corporate papers based on any claim of  
20 self-incrimination.

21 Our court reporter will go off the record at  
22 my direction. If you or Mr. Chester would like to go  
23 off the record, please tell me, and I will try to  
24 accommodate you. My only request in that regard is, if  
25 there's a question pending, if I've asked you a

1 question, before we go off the record, I would like you  
2 to go ahead and answer it, and then we can go off the  
3 record afterwards.

4 The court reporter will note for the record  
5 each time you consult with Mr. Chester before  
6 answering. This is done to ensure an accurate record.  
7 Since your testimony is being recorded by a court  
8 reporter, please respond verbally as opposed to nodding  
9 or shaking your head. Also, let me finish asking a  
10 question before you answer, so two people will not be  
11 speaking at once.

12 If you don't hear a question or don't  
13 understand a question, will you say so?

14 A. I will.

15 Q. Thank you. Either I'll repeat it or the  
16 court reporter will repeat it or I'll try to explain  
17 the question further.

18 You are under oath, so any false statements  
19 you may make today may be criminally prosecuted as  
20 perjury. Do you understand what I've explained to you?

21 A. I do.

22 Q. Are you on any medication today that would  
23 interfere with your ability to answer questions  
24 truthfully?

25 A. No. I'm fine.

1 Q. Okay. Please state your full name for the  
2 record.

3 A. Joseph Robert DeSimone.

4 Q. Have you ever used any other name?

5 A. No, I haven't.

6 Q. What is your home address, please?

7 A. My home address is [REDACTED]  
8 [REDACTED], Arizona, [REDACTED].

9 Q. Thank you.

10 And what's your home telephone number,  
11 please, if you have one?

12 A. [REDACTED].

13 Q. Thank you.

14 How long have you resided at the address on,  
15 is it, Rocking Ridge Court?

16 A. Yes.

17 Approximately four years.

18 Q. Okay. Where did you reside prior to that  
19 residence?

20 A. [REDACTED], Arizona,  
21 [REDACTED]

22 Q. And how long were you at the Promontory Drive  
23 address?

24 A. I believe about 19 years.

25 Q. Please state your work history for the past

1 15 years.

2 A. That would be, approximately, with DeSimone  
3 Blue Chip Planning, LLC.

4 Q. For approximately how many years have you had  
5 that limited liability company and done business  
6 through it?

7 A. I believe since 2003.

8 Q. What's your -- please state your education  
9 history from high school forward.

10 A. From high school forward. I went to Herricks  
11 High School in New Hyde Park, New York. I went to  
12 Hofstra University in Hempstead, New York for three  
13 years, and I went to -- I went one year to the  
14 University of Arizona and graduated 1989.

15 Q. Have you had any other formal education since  
16 graduating from -- is your degree from the University  
17 of Arizona or from Hofstra?

18 A. My degree is from the University of Arizona.

19 Q. Okay, and that's 1989. Have you had any  
20 other formal education since graduating from University  
21 of Arizona in 1989?

22 A. Yes, I have, actually. Two years at  
23 St. John's Seminary, Camarillo, California, for  
24 graduate work.

25 Q. And what years were you at St. John's



1 Seminary?

2 A. I believe 1989 to '91, in that area.

3 Q. After 1991, after you finished your studies  
4 at St. John's, did you then move back to Arizona?

5 A. Well, I would say this; I didn't leave  
6 Arizona. I just was going to school at Camarillo.

7 Q. I see. Okay.

8 A. As a resident of Arizona.

9 Q. Fair to say you've lived in Arizona since,  
10 say, 1988 or 1989?

11 A. Yes. Yes, it would.

12 Q. What is your occupation?

13 A. I am the president of -- my occupation is I'm  
14 the president of DeSimone Blue Chip Planning, and I am  
15 a life insurance agent.

16 Q. And how long have you been -- I take it  
17 you're a licensed insurance producer by the Arizona  
18 Department of Insurance?

19 A. Yes, that's correct.

20 Q. How long have you been licensed by the  
21 Department of Insurance?

22 A. I believe since 1991.

23 Q. Do you hold any other State licenses other  
24 than, say, a driver's license or your license from the  
25 Department of Insurance?

1 A. No, I don't.

2 Q. No real estate license?

3 A. I do not have a real estate license.

4 Q. Okay. Is the primary business of DeSimone  
5 Blue Chip Planning the sale of life insurance?

6 A. The purpose of DeSimone -- the primary  
7 reason, purpose of DeSimone Blue Chip Planning is  
8 selling life insurance.

9 Q. But does it have any other lines of business?

10 A. Yes. It's also involved in annuities.

11 Q. Any other lines of business?

12 A. Some hard assets, like gold.

13 Q. Okay. Other than gold, what other types of  
14 hard assets does DeSimone Blue Chip Planning deal in?

15 A. Well, we've also been involved with -- you  
16 know, for self-directed IRAs, secured capital into real  
17 estate.

18 Q. Can you explain what secured capital into  
19 real estate means?

20 A. That people can be an individual investor in  
21 homes.

22 Q. Their own homes that they live in or other  
23 people's homes?

24 A. Other people's.

25 Q. So the customers or clients of DeSimone Blue

1 Chip Planning with respect to this line of business are  
2 loaning money to other people with respect to those  
3 people's homes; is that correct?

4 A. It's that they're taking money and, yes,  
5 they're private lenders.

6 Q. Does DeSimone Blue Chip Planning have a  
7 mortgage license?

8 A. No, it doesn't.

9 Q. Do any of its employees have licenses to sell  
10 mortgages?

11 A. Well, we don't have employees. So we  
12 wouldn't have any employees that are licensed to sell  
13 mortgages.

14 Q. Okay. You've been using the pronoun we with  
15 respect to DeSimone Blue Chip Planning, but you've said  
16 the entity doesn't have any employees. How does it  
17 do -- like through whom does it do business? Is it  
18 just you; are there other people involved?

19 A. I'm the primary salesperson, yes. There are  
20 no employees, that's correct.

21 Q. Other than you, are there other people  
22 involved in performing the work that DeSimone Blue Chip  
23 Planning performs?

24 A. My mother helps me in the office with  
25 secretarial work.

1 Q. Other than your mother, is there anybody else  
2 involved besides yourself?

3 A. There's nobody else involved besides my  
4 mother and myself. My mother --

5 Q. Okay.

6 A. -- is part-time and just helps me out.

7 Q. Do you or does DeSimone Blue Chip Planning  
8 have any licenses through the Department of Financial  
9 Institutions?

10 A. We have our license through the Arizona  
11 Insurance, but I don't believe the Financial -- no.

12 MR. CHESTER: It's a yes or no.

13 THE WITNESS: No. The answer is no.

14 BY MR. BURGESS:

15 Q. Okay. Have you ever been the subject of any  
16 investigation or disciplinary action by a Department of  
17 Insurance?

18 A. Would you please say the question one more  
19 time?

20 Q. Sure. Have you ever been the subject -- let  
21 me back that up and start this over.

22 Have you or has DeSimone Blue Chip Planning  
23 ever been the subject of an investigation or  
24 disciplinary action by the Arizona Department of  
25 Insurance?



1           A.       It has been involved in an investigation, but  
2 never a disciplinary action.

3           Q.       Okay. When was the investigation that you  
4 just referred to in that answer?

5           A.       Oh, somewhere around maybe ten years ago,  
6 2008, 2009.

7           Q.       And what was the nature of the investigation,  
8 to your knowledge? What was DOI interested in?

9           A.       There was a -- it's just hard to remember. I  
10 would say there was a -- I had a co-agent that we had  
11 written an annuity, and then there came a question over  
12 some of the features of the annuity.

13          Q.       Okay. And to the best of your recollection,  
14 the investigation involved just that one annuity?

15          A.       Well, that was one. And then there was  
16 another person that wanted to see if their policy was  
17 still in force. And there was another gentleman that  
18 decided after buying an insurance policy, he wanted to  
19 dispose of it on a secondary market, and he did  
20 successfully, but then, as I remember it, he kind of  
21 came back and thought he should have had more money and  
22 complained to the Department of Insurance.

23          Q.       Okay. And I take it that there was -- coming  
24 out of this investigation, there was no disciplinary  
25 action taken against you or against DeSimone Blue Chip

1 Planning; am I correct about that?

2 A. There was no disciplinary action, that's  
3 correct.

4 Q. Have you ever filed for bankruptcy?

5 A. I have not.

6 Q. Has DeSimone Blue Chip Planning ever filed  
7 for bankruptcy?

8 A. Me or the company? The company?

9 Q. Yeah. Well, I think you answered for  
10 yourself, so now I'm asking about the company. Has  
11 your company ever filed for bankruptcy?

12 A. The company has never filed for -- DeSimone  
13 Blue Chip Planning, LLC has never filed for bankruptcy.  
14 And just to clarify, neither have I.

15 Q. Okay. Have you been associated as a member  
16 or a manager of an LLC in the past that has filed for  
17 bankruptcy?

18 A. I have never.

19 Q. Are you an officer or director of any  
20 corporation?

21 A. I am not.

22 Q. Are you a manager of any limited liability  
23 company?

24 A. I'm sorry. Would you go back to the last  
25 question you just asked me? I know I just answered it.

1 Would you be kind enough to...

2 Q. Sure. This was the one about are you an  
3 officer or director of any corporation; is that the  
4 question that you want?

5 A. I believe, yes, that was the last one.

6 Corporation, like a big company type  
7 corporation?

8 Q. It doesn't have to be a big company. It's  
9 just the form of the entity. So there's -- Mr. Chester  
10 can elaborate on this, if you would like, but there are  
11 various types of business entities, as you're probably  
12 aware. There's limited liability companies. There's  
13 also corporations. They don't have to be big  
14 corporations. It could be a one-person corporation or  
15 it could be Google. It could be, you know, hundreds of  
16 thousands of employees.

17 So regardless of the size of whether  
18 something's a corporation or not, have you ever been an  
19 officer or director of a corporation?

20 A. No, I have not.

21 Q. Okay. So then let's move to limited  
22 liability companies.

23 A. Yes.

24 Q. Are you a manager of any limited liability  
25 company?

1                   MR. CHESTER: Other than DeSimone Blue  
2 Chip Planning; is that what you're asking, or is that  
3 included?

4                   MR. BURGESS: It's any limited liability  
5 company. So it would include DeSimone Blue Chip  
6 Planning.

7 BY MR. BURGESS:

8           Q.     I think you've got -- we're going to get  
9 there. I'm not trying to -- you know, you're not going  
10 to be graded on your memory ability. I'll ask you  
11 about -- I mean I'll just put them out there. Proven  
12 Partners, LLC. There's DeSimone Blue Chip Planning,  
13 Blue Chip Real Estate Investments, LLC and Blue Chip  
14 Trading, LLC.

15                   I ran your name through our public  
16 corporations section, and those are the entities that  
17 came up in my search. So I'm just trying to figure  
18 out, with respect to those entities -- and it's best to  
19 go through them one by one. But with respect to each  
20 one, you know, what's your relationship to it; you  
21 know, are you a manager, are you a member? If you're a  
22 member, you know, what's your ownership percentage?

23                   These are all previews of the questions that  
24 I'm going to be trying to remember to ask you as we go  
25 through these, and what's your role in that particular



1 LLC.

2 So that's -- I'm laying that out so hopefully  
3 it's helpful to you to know where I'm going or what I'm  
4 trying to get at.

5 A. Yes.

6 Q. Okay.

7 A. Thank you.

8 Q. So let's start with DeSimone Blue Chip  
9 Planning. Are you a manager of that?

10 A. I am not the manager of DeSimone Blue Chip  
11 Planning.

12 Q. Is Proven Partners, LLC the manager of  
13 DeSimone Blue Chip Planning?

14 A. Yes, they are.

15 Q. Are you a member of DeSimone Blue Chip  
16 Planning, LLC?

17 A. I am a member of.

18 Q. Okay. Do you know what percentage ownership  
19 you own as a member?

20 A. Approximately 51 percent.

21 Q. And who is the other owner or owners of  
22 DeSimone Blue Chip Planning?

23 A. Well, Proven Partners. Oh, no, that's the  
24 manager. Then there's a trust. The Blackjack Trust is  
25 an owner, which states on the -- should state, because

1 it's more than 20 percent. And then there's -- I  
2 believe Proven Partners has an ownership position as  
3 well.

4 Q. Okay.

5 A. I haven't looked at it in a while.

6 Q. Who is the trustee of the Blackjack Trust?

7 A. My mother, Camille.

8 Q. And who are the members of Proven Partners,  
9 LLC?

10 A. My brother and his wife.

11 Q. And since, say, January 1st, 2017, what has  
12 been your role individually at DeSimone Blue Chip  
13 Planning?

14 A. Since January 1st, 2017?

15 Q. Yes.

16 A. My role is in sales.

17 Q. You sell the --

18 A. Meeting clients.

19 Q. You sell the life insurance policies?

20 A. Yes.

21 Q. And the annuities to the clients of your LLC?

22 A. Yes.

23 Q. Okay. Let's talk about DeSimone Marketing  
24 Solutions. Are you a manager of that limited liability  
25 company, DeSimone Marketing Solutions?

1           A.     I haven't thought about this one in a while,  
2     but thinking back, I probably was a manager. But I  
3     also want to say I believe that was closed off the  
4     books. We had closed that company out.

5           Q.     Okay. When do you think you closed it?  
6     What's your best recollection when you closed that  
7     company?

8           A.     Ballpark, you know, I would be hesitant to  
9     give you an exact year. Eight years.

10          Q.     Eight years ago?

11          A.     (Witness nodded.)

12          Q.     Okay. Just generally, what was the business  
13     of DeSimone Marketing Solutions?

14          A.     I don't -- you know, it's been so while, I  
15     haven't thought about it. But, again, just it was to  
16     provide -- it was business planning by the attorney,  
17     and it focused on marketing life insurance.

18          Q.     Are you a manager of Blue Chip Real Estate  
19     Investments, LLC?

20          A.     That's another one that's been around a  
21     while, and I'm -- I haven't thought about it in years,  
22     or very rarely. I'm probably the manager. I haven't  
23     looked at it. I haven't done anything with it. It  
24     kind of just sits there.

25          Q.     Okay. And then are you the manager of Blue

1 Chip Trading, LLC?

2 A. I am the manager.

3 Q. Is that an active company; I mean has it been  
4 doing business in the last few years?

5 A. Yes, it has been doing business, yes.

6 Q. What is the business of Blue Chip Trading,  
7 LLC?

8 A. Investment in speculation.

9 Q. And what types of investments?

10 A. By its operating agreement, it differed from  
11 stocks and mutual funds to anything else that seems  
12 appropriate.

13 Q. And for whom does Blue Chip Trading trade;  
14 for its own account or for other people?

15 A. Blue Chip Trading solely trades and works for  
16 me or family. It does not work with the public, nor  
17 does it have any clients.

18 Q. So if you were to go out and buy a hundred  
19 shares of Google, you would do that through Blue Chip  
20 Trading, LLC?

21 A. Yeah, that's fair assessment. Sure.

22 Q. And it doesn't have any investors other than  
23 yourself, correct? You've mentioned family. Let's  
24 talk about --

25 A. Well, as I recall, I believe my mother owns a



1 very small percent of it, and then I have a friend who  
2 owns a half a percent, which was recommended by one of  
3 my either attorney or accountant or both, for some  
4 reason.

5 Q. Okay. All right, so we've talked about  
6 DeSimone Blue Chip Planning, DeSimone Marketing  
7 Solutions, Blue Chip Real Estate Investments and Blue  
8 Chip Trading. Those were all limited liability  
9 companies.

10 Are you a member of any other limited  
11 liability company other than the ones we've just talked  
12 about?

13 A. I am not a member of any other company.

14 Q. Are you connected, either as an employee or  
15 an officer, of any other businesses that we haven't  
16 already talked about?

17 A. I am not an employee or officer of any other  
18 businesses that we haven't talked about.

19 MR. CHESTER: Why are you repeating his  
20 question? Just say yes or no. Just speed it up.

21 THE WITNESS: I apologize.

22 MR. CHESTER: No, don't apologize.

23 BY MR. BURGESS:

24 Q. Have you ever been convicted of any crime  
25 other than a minor traffic offense?

1 A. No.

2 Q. Have you ever been arrested?

3 A. No.

4 Q. Ever been indicted?

5 A. No.

6 Q. Have you ever been a defendant in a civil  
7 lawsuit?

8 A. Yes.

9 Q. When?

10 A. Somewhere between 2008 and 2009.

11 Q. What was the nature of that lawsuit?

12 A. The nature of the lawsuit is the plaintiff  
13 had a gripe that he thought he would have a certain  
14 option to sell his life insurance policy in two years,  
15 and market conditions changed and he was angry.

16 Q. What was the outcome of that lawsuit?

17 A. It was dismissed.

18 Q. Dismissed by the court on a motion or  
19 pursuant to a settlement?

20 A. There was -- oh, there was E & O coverage,  
21 and they settled in arbitration.

22 Q. What's your date of birth?

23 A. [REDACTED].

24 Q. And where were you born?

25 A. New York State.

1 Q. What town?

2 A. Well, I was born in Manhasset Hospital, but I  
3 didn't live in Manhasset.

4 Q. Manhasset is on Long Island, correct?

5 A. Manhasset is on Long Island, that's correct.

6 MR. CHESTER: You can just say yes. You  
7 don't have to repeat the question.

8 BY MR. BURGESS:

9 Q. Are you married?

10 A. No.

11 Q. Have you ever been married?

12 A. No.

13 Q. Do you have any children?

14 A. No.

15 Q. And at which banks or financial institutions  
16 do you hold bank accounts?

17 A. I have an account at Wells Fargo.

18 Q. Is that where DeSimone Blue Chip Planning has  
19 its account?

20 A. Yes.

21 MR. BURGESS: Please mark that.

22 (Deposition Exhibit 1 was marked for  
23 identification.)

24 BY MR. BURGESS:

25 Q. Mr. DeSimone, you've just been handed what's

1    been marked as Exhibit 1 to your examination under  
2    oath. Do you recognize this document?

3           A.     I do.

4           Q.     Is this the subpoena and cover letter dated  
5    June 2nd, 2017, addressed to the custodian of records  
6    and you at DeSimone Blue Chip Planning, LLC?

7           A.     Yes, it is.

8           Q.     And did you produce documents in  
9    approximately -- later in June 2017 pursuant to this  
10   subpoena?

11          A.     Yes, I did.

12          Q.     Okay.

13                   MR. BURGESS: Please mark this as  
14   Exhibit 2, please.

15                   (Deposition Exhibit 2 was marked for  
16   identification.)

17   BY MR. BURGESS:

18          Q.     Do you recognize, Mr. DeSimone, what has been  
19   marked as Exhibit No. 2?

20          A.     Yes, I do.

21          Q.     Can you describe it, identify it?

22          A.     It's a transmittal letter. It's also -- it's  
23   a transmittal letter answering the subpoena and a brief  
24   description of the exhibits that were sent in.

25          Q.     Okay. Then the documents that were sent in

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1 were your response to the subpoena duces tecum we just  
2 looked at as Exhibit No. 1?

3 A. I'm sorry. Would you please say that again?

4 Q. Sure.

5 MR. BURGESS: Can you please repeat  
6 that?

7 (The record was read by the court  
8 reporter as follows:

9 QUESTION: Then the documents that were  
10 sent in were your response to the subpoena  
11 duces tecum we just looked at as Exhibit  
12 No. 1?)

13 THE WITNESS: Yes.

14 BY MR. BURGESS:

15 Q. I'm going to take a few minutes and go  
16 through your letter.

17 When you were -- with respect to this letter  
18 and the documents that you produced with it, were you  
19 producing on behalf of DeSimone Blue Chip Planning or  
20 yourself or both?

21 A. Both.

22 Q. Are you the custodian of records for DeSimone  
23 Blue Chip Planning?

24 A. We don't have an official title, but I'm in  
25 charge of the records.

1 Q. Okay. To the best of your knowledge, did you  
2 and DeSimone Blue Chip Planning produce all the  
3 documents that were responsive to the categories in the  
4 subpoena?

5 A. To the best of my knowledge, yes.

6 Q. You start the letter, the first sentence  
7 says, "I entered into an agent's agreement with  
8 Financial Product Distributors, LLC April 4, 2017."

9 MR. BURGESS: Mark this as Exhibit 3.

10 (Deposition Exhibit 3 was marked for  
11 identification.)

12 BY MR. BURGESS:

13 Q. Mr. DeSimone, is what you've just been handed  
14 as Exhibit No. 3 the agent's agreement that you  
15 referred to in the first sentence of your June 20th  
16 letter?

17 A. Yes.

18 Q. And then you next write, "I have never been  
19 involved with Andrew Gamber, SoBell Corp., Voyager  
20 Financial or BAIC."

21 When did you first hear of the name Andrew  
22 Gamber?

23 A. Best of my recollection, when it was brought  
24 up in your sub --

25 Q. In the subpoena?

1           A.       Yeah.

2           Q.       Yeah. And the same question with SoBell  
3 Corp., Voyager Financial or BAIC; when did you first  
4 hear of those entities?

5           A.       It would have been the same time as I learned  
6 about Andrew Gamber.

7           Q.       Okay. And let's just refer back for a second  
8 to Exhibit 1. If you turn to the Exhibit A, it's the  
9 third page of Exhibit 1, and it has a category for  
10 Definitions and Instructions, and it lists Gamber, it  
11 lists BAIC. Is that -- is the best of your  
12 recollection that this is where you learned of Gamber  
13 and BAIC?

14          A.       This is the best of my recollection.

15          Q.       The subpoena, I don't think, references  
16 SoBell or Voyager. So how did you come to reference  
17 those entities, SoBell and Voyager, in your June 20th  
18 letter responding to the subpoena?

19          A.       Well, most likely, after receiving your  
20 subpoena, I checked around about Andrew Gamber and what  
21 he was doing.

22          Q.       And what did you find?

23          A.       That he was somehow affiliated with these  
24 different companies.

25          Q.       And continuing with Exhibit 2, starting the

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1 second paragraph, you wrote, "I have reviewed the  
2 materials, accusations and mistakes of Andrew Gamber  
3 and Voyager Financial with public online resources."

4 A. Uh-huh.

5 Q. I'm just trying to understand what you did  
6 after you got the subpoena. Did you do -- after you  
7 got the subpoena and saw his name, you then did online  
8 research, looked him up, and found what you found?

9 A. Yeah. It just was an important part of the  
10 subpoena. I did some checking around and wanted to  
11 find out who he was.

12 Q. Okay. Continuing with Exhibit 2, in the  
13 second paragraph, your second sentence, you wrote,  
14 quote, The explanation and critique from regulators in  
15 those resources do not apply to my work started this  
16 April 2017, closed quote.

17 To the best of your knowledge, when did you  
18 offer the first investment involving the sale of  
19 payments from a military pension or military disability  
20 benefits?

21 A. Well, just to clarify --

22 MR. CHESTER: Answer the question.

23 BY MR. BURGESS:

24 Q. Go ahead.

25 A. I first -- it was that year with the Moreno



1 Trust that I had sent you. So that would be the answer  
2 to your question. And, of course, there was different  
3 types of pensions in there.

4 Q. Right.

5 A. It wasn't just military.

6 Q. Right.

7 A. Just saying.

8 Q. There was one -- what were the other types of  
9 pensions other than military pensions or disability  
10 benefits? Do you recall?

11 A. The one that stands out, and it's been a  
12 while since I looked at it, MBA Pension.

13 Q. And there was one from the state of  
14 Connecticut too, right?

15 A. I believe so.

16 Q. That sounds familiar? Okay.

17 When you -- after you got the subpoena and  
18 you did your online research and saw materials by  
19 regulators concerning Mr. Gamber and Voyager Financial,  
20 did you read in any of those materials by the  
21 regulators that really the subject of what they were  
22 focused on was the sale by Mr. Gamber and Voyager  
23 Financial of investments involving military pensions  
24 and disability benefits?

25 A. Yes, they talked about it, yeah.

1           Q.     Okay. Did you have any concern or do you  
2 have any concern that some of the investments that you  
3 sold to the Moreno Trust or to a few individuals also  
4 involved the same type of assets, these military  
5 pensions or disability benefits?

6           A.     Do I have a concern that they are these  
7 military benefits?

8           Q.     Yes.

9           A.     Well, they're certainly similar, but under a  
10 different structure.

11          Q.     Okay. How is the structure different?

12          A.     Well, we never worked in any of Gamber's --  
13 I've never worked in any of Gamber's organizations, and  
14 we're not -- I don't have the -- I would say we have a  
15 different ex -- just a different experience than -- I'm  
16 not experiencing -- I'm sorry. I didn't answer your  
17 question.

18                   MR. CHESTER: Yeah, you know what, you  
19 need to put these away, seriously. I think you're  
20 getting distracted. I don't think the answer is in  
21 here.

22                   THE WITNESS: Yeah.

23                   MR. CHESTER: So focus on the  
24 question.

25                   THE WITNESS: I apologize.

1 BY MR. BURGESS:

2 Q. No problem.

3 So you were saying that you think the  
4 products that you were selling came from or provided  
5 for a different experience.

6 A. I would like to scratch that.

7 Q. Okay. Go ahead.

8 A. If I can scratch that, I would like -- thank  
9 you.

10 Q. Well, I mean the record is going to say what  
11 the record says, but if you want to clarify or explain,  
12 you can do that. She's literally not going to scratch  
13 the record. Especially lawyers always want to withdraw  
14 their questions and start over, but it's always  
15 permanent.

16 A. Okay.

17 Q. So all we can do is try and rephrase and  
18 answer, you know, to the best of our ability.

19 A. Yeah, they're similar products.

20 Q. In that they're military pensions or military  
21 benefits; is that one of the similarities?

22 A. That that's -- that's discussed in the  
23 program, yes.

24 Q. When you were reading these -- I've referred  
25 to them as materials issued by the regulators. Really,

1 they were -- is it your recollection that they were  
2 orders by regulators, either cease and desist orders or  
3 consent orders?

4 A. I don't remember that.

5 Q. Okay. Regardless of what they were captioned  
6 or titled, do you recall reading in any of those  
7 materials that the materials discussed that the sale of  
8 payments from military pensions or disability benefits  
9 is prohibited by federal law?

10 A. I don't remember exactly like that.

11 Q. Okay.

12 MR. CHESTER: Also, Counsel, if you  
13 don't mind, for foundation, can you give a time frame  
14 of when he was reading these, because I think that's  
15 buried ten questions ago, so...

16 MR. BURGESS: Sure.

17 MR. CHESTER: Thanks.

18 MR. BURGESS: Thank you, Mark.

19 BY MR. BURGESS:

20 Q. Mr. DeSimone, when were you -- when did you  
21 read these public online resources, as you referred to  
22 them in the first sentence of the second paragraph of  
23 your June 20th letter?

24 A. When I received -- you know, after --  
25 sometime after I received the subpoena.



1           Q.       So sometime between June 2nd, when you  
2       received the subpoena, and June 20th, when you wrote  
3       this letter?

4           A.       Yes.

5           Q.       Okay. All right, let's continue with the  
6       third sentence in the second paragraph of your letter.  
7       You wrote, "With the due diligence and structure of the  
8       agreement provided by the attorneys at Upstate Law  
9       Group, I have been involved with a structure that does  
10      not involve only one party whose performance is  
11      completely relied upon." [Quoted as read.]

12                    I want to zero in and focus on your use of  
13      the words or phrases due diligence and structure of the  
14      agreement by the attorneys at Upstate Law Group.

15                    To your knowledge, what due diligence did  
16      Upstate Law Group perform with respect to these  
17      investments?

18           A.       What you would expect from any law firm that  
19      would provide documents, legal documents; from any law  
20      firm that not only would provide legal documents, but  
21      would be actively in the administration of these  
22      documents as well; that they had made sure they were  
23      within the confines of the law and would have disclosed  
24      any type of concerns to clients.

25           Q.       Okay. Do you know whether Upstate Law Group

1 did anything to ensure that these investments complied  
2 with the law?

3 A. Mr. Burgess, you know, looking at it, I did  
4 some checking around before I got involved with it.

5 Q. Okay.

6 A. And when I was asking around, checking  
7 around, I could see that they were a legitimate law  
8 firm in South Carolina, seemed to be in the good graces  
9 of their Bar Association, and just like an attorney  
10 around here that I would have maybe do a document for  
11 me, you know, it seemed fine. I didn't see any red  
12 flags that I should distrust their proficiency as an  
13 attorney in that capacity.

14 Q. Okay. Did you ever personally engage Upstate  
15 Law Group to perform any work at all in connection with  
16 any of these investment products?

17 A. I did not engage them personally.

18 Q. And DeSimone Blue Chip Planning didn't engage  
19 them either?

20 A. We engage -- well, we engaged them through  
21 our relationship with Financial Product Distributors.

22 Q. How do you engage a lawyer through another  
23 party?

24 A. But when you say engage, I've never met them.

25 Q. You never met Upstate Law Group?

1 A. No.

2 Q. You've never met Candy Kern-Fuller?

3 A. No.

4 Q. Or anybody else, to your knowledge, from  
5 Upstate Law Group?

6 A. Correct.

7 Q. Did you have an attorney-client relationship  
8 with Upstate Law Group?

9 A. No.

10 Q. So you were just relying on the fact that  
11 they were lawyers, that they were a law firm, and there  
12 didn't appear to be any red flags, from what research  
13 you did on them; is that fair?

14 A. Yes.

15 Q. Okay. So coming back to the question, do you  
16 know if Upstate Law Group did anything to ensure that  
17 these investment products complied with the law?

18 A. If you're asking me if they complied with the  
19 law, their work complied with the law as far as --

20 MR. CHESTER: Why don't you reread the  
21 question. I think you didn't hear the whole question.  
22 Stop answering.

23 BY MR. BURGESS:

24 Q. Yeah, I think you're answering a different  
25 question that I haven't asked yet. I wasn't asking if

1 they complied with the law. I'm asking do you know  
2 what, if anything, Upstate Law Group did to ensure that  
3 they did comply with the law or would comply with the  
4 law?

5 A. With my checking, I -- like any attorney in  
6 good standing, I would expect them to act in -- that  
7 they were in compliance by their good standing.

8 Q. Okay. But you didn't have an attorney-client  
9 relationship with Upstate Law Group, right?

10 A. That's correct.

11 Q. Did you or DeSimone Blue Chip Planning pay  
12 any fees to Upstate Law Group?

13 A. We did not pay any fees, no.

14 Q. Did you or DeSimone Blue Chip Planning have  
15 any engagement letter, whether directly or somehow  
16 through Financial Product Distributors, with Upstate  
17 Law Group?

18 A. No.

19 Q. Now, I kind of started on this line of  
20 questioning several questions ago, but I was asking  
21 what due diligence you understood that Upstate Law  
22 Group did. And I think your answer was along the lines  
23 of that they prepared documents. You assumed that in  
24 preparing the documents, they, as lawyers, were  
25 ensuring that the documents, you know, were legal.



1           Is that a fair summary of what due diligence  
2   you understood that Upstate Law Group did?

3       A.     Yes.

4       Q.     Anything else?

5       A.     I have nothing to add.

6       Q.     Okay. Your letter goes on in the second  
7   paragraph to say that "Upstate Law Group has a multiple  
8   party structure including 1) Buyer, 2) Seller,  
9   3) Performance Arbitrage Company (performs critical  
10   evaluation of sellers as well as replacing buyer funds  
11   caused by seller nonperformance in the future) and  
12   4) Upstate Law Group utilizes an IOLTA account under  
13   the supervision of the South Carolina Bar Association  
14   with the benefit of a comprehensive three-way  
15   reconciliation of IOLTA accounts between attorneys,  
16   their clients, and the Bar Association of South  
17   Carolina."

18           There's a lot in that sentence. Let's try to  
19   break that down to smaller pieces. Let's talk about  
20   the -- who's the buyer in that sentence or with respect  
21   to these investments? Is that the -- that would be the  
22   clients, client or clients, of DeSimone Blue Chip  
23   Planning; for instance, like the Moreno Trust?

24       A.     Yes.

25       Q.     And who's the seller? Is that the person

1 receiving the military pension or military disability  
2 benefits or the MBA Pension or the pension from the  
3 State of Connecticut?

4 A. Yes.

5 Q. Performance Arbitrage Company, what due  
6 diligence did you do, or did you do any due diligence  
7 with respect to Performance Arbitrage Company?

8 A. Again, I checked around. I checked the  
9 internet. And as with Upstate Law Group, I also talked  
10 to David Woodard of Financial Product Distributors to  
11 get an understanding of the structure.

12 Q. Okay. When you say you checked around about  
13 Performance Arbitrage Company, what do you mean? How  
14 did you check around? Where did you check?

15 A. Like most people, different searches on the  
16 internet, asked around, general.

17 Q. Who did you ask?

18 A. I don't remember. Just did some checking and  
19 didn't see anything terrible.

20 Q. Did you see anything negative?

21 A. You know, after talking to David Woodard and  
22 doing the checking around, I felt comfortable with the  
23 business.

24 Q. My question was, when you checked around, did  
25 you see anything negative about Performance Arbitrage

1 Company?

2 A. At this moment, there's nothing in particular  
3 that's coming in my mind, that strikes me.

4 Q. To the best of your knowledge, you didn't  
5 come across negative information about that company; is  
6 that your recollection?

7 MR. CHESTER: And, again, do you have a  
8 time frame?

9 MR. BURGESS: I think he's talking about  
10 before he started actually offering these products.

11 BY MR. BURGESS:

12 Q. Is that right?

13 A. I believe so.

14 Q. So you did some due diligence before you  
15 started offering these things, right?

16 A. I certainly checked around and looked into it  
17 before I jumped in.

18 Q. Okay. Well, let's back up. We'll come back  
19 to this, but let's back up and go over how did you  
20 first become aware of the opportunity to sell these  
21 types of investments? How did you get into this?

22 A. For some reason I started talking to David  
23 Woodard, and he had introduced to me the idea, and...

24 MS. NELSON: If I can, Jamie.

25 MR. BURGESS: Yeah, go ahead.

1 MS. NELSON: Can you describe the  
2 relationship between you and Mr. Woodard? Did you have  
3 previous knowledge of him? Was he a personal friend?

4 THE WITNESS: He was not a personal  
5 friend. And, boy, it's been a while. It's just hard  
6 to remember. He was introduced or he had called me. I  
7 don't feel comfortable telling you something exactly,  
8 it's been so -- it's been a while ago.

9 MS. NELSON: But prior to offering these  
10 products, you knew him or of him?

11 THE WITNESS: I did not.

12 Oh. Yes, before offering, yes, I did  
13 know him. That's how -- yes. The answer is yes.

14 BY MR. BURGESS:

15 Q. Okay. So he, David Woodard -- is it Woodward  
16 or Woodard?

17 A. Your guess is as good as mine.

18 MR. CHESTER: I think it's Woodard, for  
19 the record. There's no -- there's only one W.

20 MR. BURGESS: I think you're right,  
21 Mark.

22 BY MR. BURGESS:

23 Q. Have you ever met him in person?

24 A. I have not.

25 Q. You don't recall how you first connected with



1 him?

2 A. He had called me a long time before I ever  
3 did the Moreno Trust, for example.

4 Q. Like how long before you started?

5 A. I don't remember. Certainly it was more than  
6 30 days.

7 Q. Do you know how he got your -- do you have a  
8 recollection of or understanding of how he came to  
9 contact you; like how did he -- how did he get your  
10 name?

11 A. I just don't remember at this moment.

12 Q. Did you go to any seminars where these types  
13 of investment products were described or -- I'm just  
14 trying to figure out like how did he find you or, you  
15 know, how did you become familiar with these products.  
16 I'm just trying to figure that all out.

17 A. I did not go to a seminar and meet him at a  
18 seminar.

19 Q. Or maybe not meet him, but did you go to a  
20 seminar at all about these products?

21 A. You know, I've never been to a seminar  
22 regarding these products.

23 Q. Okay. Do you know who else in Arizona is  
24 offering or selling these types of products?

25 A. I don't know anyone else in Arizona, no.

1 MR. CHESTER: Jamie, in a short time I'm  
2 going to need a restroom break, so let me know.

3 MR. BURGESS: Yeah, we can do that now.  
4 We've been going for about an hour. So we'll go off  
5 the record.

6 (A recess was taken from 11:12 a.m. to  
7 11:24 a.m.)

8 MR. BURGESS: Are we on? We can be.

9 BY MR. BURGESS:

10 Q. So, Mr. DeSimone, before we took the break we  
11 were talking about how you came to begin to sell the  
12 investments that you sold relating to these pensions,  
13 and you described getting a phone call and having  
14 communication with a David Woodard, and you don't -- do  
15 you have any -- since we've taken the break, have you  
16 been able to recall your understanding, if you ever had  
17 one, about how he came to contact you?

18 A. I don't know.

19 Q. So how did you -- tell me what you recall  
20 about your conversation or conversations with David  
21 Woodard about the potential to sell these types of  
22 investments.

23 A. I'm sorry. Would you say that again? I  
24 apologize. Read it back again.

25 Q. Please tell us what you recall about your

1 conversation or conversations with Mr. Woodard about  
2 the potential to sell these types of investments.

3 A. Well, when I talked to David Woodard, you  
4 know, I had some -- you know, I wanted to know more  
5 about the transaction and the risks involved and the  
6 important issues. And he was my -- you know, he  
7 reassured me that his attorneys in Texas had looked at  
8 this and that they had worked intimately with Upstate  
9 Law Group, and that, you know, he even shared with me  
10 that the great state of Texas had been involved with  
11 his attorney looking at these, the structure of the  
12 agreement. And that after discussions and after the  
13 great state of Texas looking at the documents, that  
14 things had -- it seems to be -- everything seems to be  
15 in order. There was enough time that had passed that  
16 nothing had happened, and they're doing quite -- and  
17 they were doing quite well in Texas, my understanding  
18 from David Woodard.

19 Q. Okay. Did Mr. Woodard say who his attorney  
20 was?

21 A. He did, and I can't remember his name.

22 Q. Do you have notes anywhere of that  
23 conversation?

24 A. I don't know, and I don't believe so.

25 Q. So Woodard relates to you that his attorney

1 has looked at it, and not just his attorney, but the  
2 State of Texas has looked at it and doesn't see a  
3 problem with these investments?

4 A. He said that they had an interview with the  
5 securities people of Texas, they had met them. Their  
6 attorney had given them the documents, and many, many  
7 months had passed and they didn't hear from them again.

8 Q. Okay.

9 A. And that it was a positive meeting they had  
10 with the securities people in Texas.

11 Q. Okay. Do you have an understanding why  
12 Woodard's attorney met with the securities people? Was  
13 this product a security?

14 A. I don't believe it was that. It was  
15 regarding more to conduct of past issues regarding this  
16 product.

17 Q. Can you explain that?

18 A. It wasn't regarding whether it was -- it was  
19 not regarding whether it was a security or not. It was  
20 more regarding other issues not related to whether it  
21 was a security, as I remember.

22 Q. Do you have any understanding what those  
23 issues were?

24 A. There was some disgruntled veterans, as I  
25 remember. Some veterans were disgruntled about their



1 participation in a similar program.

2 Q. Okay. Did you have any concern that if the  
3 Texas securities people looked at this, it might be a  
4 security?

5 A. After talking to Mr. Woodard and knowing that  
6 he had shared the documents of the structure and his  
7 relationship with Upstate Law Group and the work that  
8 Upstate Law Group had done and the fact that his  
9 attorney had talked to the people at Texas Securities,  
10 that apparently wasn't an issue.

11 Q. And you remember thinking this at the time?

12 A. That was the -- when I was talking to  
13 Mr. Woodard, Mr. Burgess, that was the impression I  
14 had.

15 Q. What do you know about David Woodard himself?  
16 Did you know his background?

17 A. I just basically know he's been involved in  
18 financial products and maybe even insurance sales at  
19 one time.

20 Q. Do you know whether he ever held a securities  
21 license?

22 A. I don't know.

23 Q. Did you know that in 2016 his securities  
24 license was revoked?

25 A. No, I did not know that.

1 Q. What was the source of your information about  
2 Mr. Woodard? Was it Mr. Woodard himself, or did you do  
3 any independent research on him?

4 A. Did some checking on the internet.

5 Q. And what did you find?

6 A. As I remember, I didn't see any red flags,  
7 anything that came up in my searches.

8 Q. Did you ever engage an attorney to review  
9 anything about these -- prior to Mr. Chester and prior  
10 to Mr. Baskin, who I think you consulted with briefly  
11 when you received the subpoena last year, but before  
12 you started offering these investments, did you consult  
13 with an attorney about any aspect of offering them or  
14 selling them?

15 A. I felt comfortable knowing that David Woodard  
16 had an attorney, his answers and his relationship with  
17 Upstate Law Group, who was not only providing the  
18 documents and the structure, but was actively  
19 administering the plan.

20 Q. My question was --

21 MR. CHESTER: Say yes or no. It's yes  
22 or no.

23 BY MR. BURGESS:

24 Q. -- did you ever consult with anybody?

25 A. No.

1 Q. Did you ever consult with counsel yourself?

2 A. No, I hadn't.

3 Q. You were relying on the fact that Mr. Woodard  
4 said that he had an attorney and that Mr. Woodard said  
5 that Upstate Law Group was doing whatever it was doing,  
6 and you were satisfied with that?

7 A. In addition to my own checking on the  
8 internet, yes.

9 (An off-the-record discussion ensued.)

10 MR. BURGESS: Let the record reflect  
11 that Mr. Chester has just conferred with Mr. DeSimone.  
12 BY MR. BURGESS:

13 Q. About how many conversations did you have  
14 with Mr. Woodard before you began offering these  
15 investments to, say, the Moreno Trust, which I believe  
16 was the first, your first client in these investments?

17 Am I correct about that, that Moreno Trust  
18 was your first client with respect to these  
19 investments?

20 A. Yes. Correct.

21 Q. Okay. So how many conversations did you have  
22 with Mr. Woodard about these products before you  
23 offered and sold them to the Moreno Trust?

24 A. I had -- I don't know how many, but I had  
25 extensive conversations with David Woodard.



1           Q.     Okay. And I think you testified earlier that  
2 the things you wanted to know about were, you know,  
3 what were the risks and how was the transaction going  
4 to work. What were the risks that you were concerned  
5 about, or what risks did you inquire about?

6           A.     Well, my concern was that, you know, you  
7 can't assign a federal pension; you can't change the  
8 ownership. So --

9           Q.     Where did that concern come from?

10          A.     Well, he's talking -- it's just, you know,  
11 talking about these pensions, you know, in a general  
12 way in these conversations. I'm like, but the risk is  
13 that you've never seen anybody transfer their Social  
14 Security. You've never seen anybody transfer their  
15 military pension into somebody else's name. You could  
16 do that with life insurance. You could change title  
17 with an absolute assignment form. But I said I've  
18 never seen anybody transfer their Social Security.

19                 So that would -- that causes risk that if the  
20 pensioner decided not to follow through on what they  
21 had agreed to, you know, that would kind of leave my  
22 client -- what's the protections for the buyer? I was  
23 interested in the protection of my buyers.

24          Q.     Okay. What's your understanding of why  
25 people don't assign their Social Security payments?



1 MR. CHESTER: It's just observation.  
2 I've never seen anybody assign their Social Secure --  
3 my mother is on Social Security and my father. You  
4 know, nobody assigns. Just practical knowledge.

5 BY MR. BURGESS:

6 Q. Do you know whether it's illegal to assign  
7 Social Security benefits?

8 A. For me, just common sense. If there's no  
9 form, it can't be done. You can't put it in -- you  
10 can't put your pension into somebody else's name.

11 Q. Okay. Your pension? Or I thought we were  
12 talking about Social Security.

13 A. Social Security. You can't put your Social  
14 Security into somebody's name, whether you like them or  
15 whether they're a creditor. There's just no form.  
16 It's just not done.

17 Q. When you say there's no form, could somebody  
18 create a form and then be able to assign their Social  
19 Security benefits to somebody else?

20 A. I don't know, but I've never seen it.

21 Q. Prior to the types of investments that you  
22 did with the Moreno Trust, had you ever seen somebody  
23 assign a military pension or military disability  
24 benefits?

25 A. No.

1 Q. Okay. So you had a concern that this was one  
2 of the risks, is could this even be done, right?

3 A. I was concerned it was a risk to my buyer, to  
4 the buyers.

5 Q. And so did you believe that the military  
6 pensions or retirement or disability benefits could be  
7 assigned?

8 A. I did not believe they could be assigned  
9 where you can put somebody's name on it.

10 Q. Okay.

11 A. Or no.

12 Q. But did you think that -- go ahead and  
13 elaborate. You're saying, well, I didn't think it  
14 could be done this way, which kind of suggests to me  
15 that you found or believed that it could be done  
16 another way.

17 A. Nobody can assign their Social Security to  
18 somebody else. Nobody can assign their military  
19 pension to somebody else. So that's a risk. You can't  
20 do it. So that's a risk. So how does this work? That  
21 was my question to Woodard.

22 Q. And what did you come to understand about how  
23 it could work?

24 A. Well, David Woodard went into a lengthy, you  
25 know, discussion over the fact that the money is going

1 into their checking account. If they bank at Bank of  
2 America, it's going into the person's bank account. So  
3 they -- you know, once it hits their account, they can  
4 do whatever they want with that money.

5 Q. Okay. Would the same be true with respect to  
6 Social Security benefits?

7 A. When Social Security goes into my mother's  
8 checking account, she can take that money out of her  
9 checking account and she can spend it on whatever she  
10 likes, and she does.

11 Q. And yet you've never seen a contract or an  
12 assignment where someone agrees that after their Social  
13 Security benefits hit their bank account, that they'll  
14 be paid out to another person; you've not seen that,  
15 right?

16 A. What was the time frame on that?

17 Q. Ever.

18 A. I don't think I understand the question. I'm  
19 sorry.

20 Q. Let me try to better explain it then.

21 You've never seen a situation where someone  
22 receiving Social Security benefits signs a contract or  
23 an agreement or an assignment where, effectively, it  
24 says I, the recipient, after I receive the Social  
25 Security benefits into my bank account, agree to pay

1   them to you, third party; you've never seen that,  
2   right?

3       A.     Well, people do that all -- they're not  
4   pledging -- they do that all the time. They take money  
5   out of their account all the time.

6               MR. CHESTER: Listen to the question.  
7   Listen to the question.

8   BY MR. BURGESS:

9       Q.     But you've never seen a contract or an  
10   assignment where somebody agrees in advance I'm going  
11   to -- as soon as I get my Social Security payments into  
12   my account, I'm going to then pay them on to you;  
13   you've never seen that, right?

14      A.     Correct.

15      Q.     Okay. So you had a similar concern -- you've  
16   never seen a situation with military pension or  
17   disability benefits up until these investments, you  
18   know, to Moreno Trust or to Jean Hogue or Frances  
19   Schlack, right, where that happened?

20      A.     I wasn't aware of that, even though I know  
21   there's a bigger industry on fixed income, a lot of  
22   different things, but...

23      Q.     Okay. So Woodard explained to you that,  
24   look, once the veteran receives the benefits into his  
25   or her account, they can do with them what they want,



1 right?

2 A. Yes, he did.

3 Q. Okay. And did that alleviate your concern  
4 about the risk to your buyer?

5 A. Yes.

6 Q. And then what about the risk that if -- so it  
7 was one risk that, A, this might not even be able to be  
8 done. And I think we've just talked about that risk,  
9 and Woodard explained that, look, once it hits their  
10 account, then, yeah, they can pay it -- the veteran can  
11 pay the benefits after he or she has received them to  
12 whomever he wants, right? So that took care of that  
13 risk, right?

14 A. Yes.

15 Q. And then was another risk the risk that the  
16 veteran could default and decide at some point I'm done  
17 paying this person; I'm just going to keep the money  
18 for myself?

19 A. That's a risk.

20 Q. Okay. And so what did you understand about  
21 how to mitigate that risk or manage that risk?

22 A. That's why there's additional provisions in  
23 the closing package, and one of the provisions is --  
24 yeah, that's why there's these different provisions and  
25 protections in the closing package that address that

1 risk.

2 Q. And what are those provisions?

3 A. Well, one of the -- the due diligence that  
4 they -- when they look at the seller, what good  
5 business reason do they want 40, \$50,000.

6 That the way David Woodard explained it to  
7 me, they have a very -- they're very selective, because  
8 they don't want problems. They're very selective, and  
9 the majority of these cases, as he explained to me, was  
10 people who had high debt and they wanted to get rid of  
11 it, and they found this a better way to get this out of  
12 their life. You know, they had other -- maybe the wife  
13 was working, and they had different sources of income.  
14 So it was a business decision they made to proceed. So  
15 that was important, that there was a legitimate reason,  
16 instead of just throwing money at somebody.

17 And then there's the different clauses in it,  
18 the UCC-1 lien, liquidation of damages. There's  
19 different provisions that all -- Performance Arbitrage,  
20 all taken together, built up a fence of protection to  
21 the buyer in case of that risk happening.

22 Q. Okay. Did Woodard, in his conversations with  
23 you, ever discuss that there are federal statutes that  
24 prohibit the sale of military retirement and disability  
25 benefits?

1 A. He did.

2 Q. And what did he say about those?

3 A. He said if I -- he referred to the documents  
4 that I sent you in the closing package. That that was  
5 the disclosures in the documents, on several of the  
6 different documents.

7 Q. Did he discuss that there were -- that the  
8 issue had been litigated and that courts had ruled that  
9 these types of transactions, these types of assignments  
10 were void and illegal?

11 A. No.

12 Q. If you had known that there were court  
13 decisions that have held that these types of  
14 transactions were void or illegal, would you have sold  
15 any of these investments?

16 A. No.

17 Q. When was the last time you spoke with David  
18 Woodard?

19 A. Four to -- approximately four to six weeks  
20 ago.

21 Q. What was that discussion about?

22 A. A client got paid twice on the same day, so  
23 he got paid more than he should have.

24 Q. That's a good problem.

25 A. Thankfully. We like those problems.



1           Q.     Did you tell him that you had been subpoenaed  
2     to come in for an examination under oath when you spoke  
3     with him? I'm thinking that the date of your original  
4     examination under oath, which I had to postpone, was  
5     back in early June, so I think we probably would have  
6     sent the subpoena in May. So I don't know how that  
7     timing works with when you spoke with Woodard.

8           A.     I can't remember the time. Yeah, but I  
9     mentioned it to him.

10          Q.     Did he say anything about this?

11          A.     He seemed very calm and confident and just  
12     didn't get the impression that he was concerned, and  
13     that he, you know -- he didn't have any -- he didn't  
14     have much to say. He had -- and -- yeah, that's as  
15     I -- that's the best I -- that's what I remember.

16          Q.     Okay. So you talked about the problem, the  
17     good problem to have, where the client got paid twice  
18     in one day, got overpaid.

19                 To your knowledge, have there been situations  
20     with respect to the investment that you sold to Moreno  
21     Trust or to any of the other individuals where they  
22     haven't gotten paid, where there have been defaults,  
23     where people aren't getting paid what they're supposed  
24     to get paid under these contracts?

25          A.     No.



1 Q. That's good.

2 A. Thank God.

3 Q. That's good.

4 MR. CHESTER: Knock on wood.

5 Everybody's happy.

6 BY MR. BURGESS:

7 Q. That's good. Okay.

8 Performance Arbitrage Company, let's come  
9 back and talk about them for a little bit.

10 Before you started selling these products in  
11 approximately March, April of 2017, I think you said  
12 you did some online research, and if I recall, some of  
13 your online research was with respect to Performance  
14 Arbitrage Company. Am I restating that correctly?

15 A. Yes.

16 Q. What information, if any, did you learn about  
17 Performance Arbitrage Company?

18 A. No red flags or anything terrible.

19 Q. Do you know who any of the officers or  
20 principals of Performance Arbitrage Company are?

21 A. Only what was related to me through  
22 Mr. Woodard.

23 Q. Okay. And what did he relate?

24 A. The people at the time and somewhat of their  
25 back -- general, generalities, their name, what they're

1 doing.

2 Q. Is the name Michelle Plant familiar; did her  
3 name come up in connection with Performance Arbitrage?

4 A. Yeah, she's in there. She was on the "If you  
5 have a problem, call Michelle Plant."

6 Q. Do you know anything about her background?

7 A. No, I don't.

8 Q. Did you know that she worked for Andrew  
9 Gamber's company, Voyager Financial?

10 A. No, I didn't know that.

11 Q. If you had known that before you started  
12 selling these, would you have still sold these?

13 A. I would have had to ask more questions; in  
14 what capacity, what did she do, what was she involved  
15 in.

16 Q. Okay. I'll share what I know from the  
17 documents that I've seen; is that she was the director  
18 of compliance for Voyager Financial when it was selling  
19 these military pension, retirement, disability benefit  
20 products at the same time that it was getting hit with  
21 some of the orders or materials from regulators that  
22 you've seen saying, you know, cease and desist. These  
23 are securities. You know, these types of transactions  
24 are prohibited by federal law. She was the director of  
25 compliance during that period of time.

1           And so she's involved with Performance  
2 Arbitrage group, is your understanding?

3           A.       My understanding is what David Woodard had  
4 said by telephone and that she's the contact person if  
5 there's some payments missed, if there's a problem.

6           Q.       Okay. If there were a problem, if there were  
7 payments missed and there was a problem with an  
8 investor who was supposed to get paid and wasn't  
9 getting paid, how was Performance Arbitrage Company  
10 going to -- what was its role in that situation?

11          A.       Well, they're there to be a protection for  
12 the buyer that way, due to just, you know, there could  
13 be some missed payments or late payments. They would  
14 make sure that that was alleviated.

15          Q.       How would they -- how would Performance  
16 Arbitrage Company alleviate that problem?

17          A.       Through the monitoring of payments, and they  
18 can request from the IOLTA account that money can be  
19 sent to replace what's not there.

20          Q.       How much money was being held in the IOLTA  
21 account? Do you know?

22          A.       David Woodard never gave me a number on that.  
23 I know that on every transaction a percentage is put  
24 into that account, and that's part of one of the  
25 protections to clients.

1 (An off-the-record discussion ensued.)

2 BY MR. BURGESS:

3 Q. Let's explore that a little bit.

4 (An off-the-record discussion ensued.)

5 MR. CHESTER: You okay?

6 THE WITNESS: I'm okay.

7 (An off-the-record discussion ensued.)

8 MR. BURGESS: Let the record reflect  
9 that Mr. Chester and Mr. DeSimone have just been  
10 conferring.

11 BY MR. BURGESS:

12 Q. One of the investments that you sold was to  
13 the Moreno Trust, and it was -- I'm sorry, this one is  
14 not the Moreno Trust. I misspoke. Let's see.

15 No, it is. It is the Moreno Legacy Trust,  
16 and it's got an identifier on it that was how kind of  
17 you produced it of PRN-1785. Does that sound at all  
18 familiar, how these things were labeled?

19 A. Yes.

20 Q. Okay. And it was in the -- this is just an  
21 example. And it was in the amount of, the purchase  
22 price I believe was \$89,023.

23 So just as a hypothetical example, if on that  
24 \$89,000 investment the seller, the veteran, made the  
25 first \$10,000 worth of payments, but then failed to



1 make any subsequent payments, then there would be at  
2 least \$79,000 owing on that investment, right?

3 A. Yes.

4 Q. So how would Performance Arbitrage Company  
5 protect the buyer in that situation?

6 A. Mr. Burgess, it's my understanding that it is  
7 a reserve for contingent, you know, problems that come  
8 up. And as I've -- in my letter, it's not an insurance  
9 company like State Farm. It's not a guarantee  
10 associate -- it's my understanding it's reserves for  
11 when there's problems with payments.

12 Q. Okay. So was Performance Arbitrage Company  
13 to make the payments that were missed in that  
14 situation?

15 I mean my question is, how was Performance  
16 Arbitrage Company going to make the \$79,000 payments  
17 that were still owed to the investor?

18 A. Performance Arbitrage, after three missed  
19 payments, has some of these protections that are built  
20 into the closing packet that the attorneys at Upstate  
21 Law Group had formulated in their documents. So as a  
22 convenience to the buyer, they keep things going so the  
23 buyer is not, you know, missing their payments.

24 But in addition -- this is how I understand  
25 it from the documents and from David Woodard. The way

1 I understand it from the documents and David Woodard,  
2 they now have certain tools. They can contact the  
3 seller and find out what the problem is. They can --  
4 they have legal tools to get them back on track.

5 Q. What legal tools?

6 A. As I understand it from, again, David and  
7 from the documents of Upstate Law Group, you know,  
8 there's different legal provisions in those documents  
9 that gives them -- you know, gives them the potential  
10 of rectifying the situation.

11 Q. Okay. Would you agree that if federal law  
12 prohibits these types of assignments of military  
13 pensions or disability benefits in the first place,  
14 that any legal provisions in these contracts to remedy  
15 a default are useless?

16 A. It was my understanding with Woodard and the  
17 Upstate Law -- and his connections with Upstate Law  
18 Group, that the provisions were a protection and they  
19 had been used prior in courts to get people back on  
20 track.

21 Q. Okay. But Woodard didn't tell you that other  
22 courts have held that these types of transactions are  
23 illegal and unenforceable?

24 A. He did not.

25 Q. If it's true that these types of transactions

1 are illegal and unenforceable, would you agree that  
2 whatever the contracts say about the protections for a  
3 buyer in the event of a breach are useless? I mean if  
4 the whole underlying transaction is illegal, doesn't  
5 matter what the documents say about it, right, because  
6 federal law is going to control?

7 A. I'm not an attorney or anywhere near your  
8 knowledge or expertise, Mr. Burgess. Common sense,  
9 like I see what you're saying from a moral standpoint.  
10 We certainly don't want to put our clients in jeopardy,  
11 and we like our clients and we'd like to keep it that  
12 way, and we don't want to do things that would  
13 jeopardize that.

14 Q. I understand and appreciate that, and it's  
15 great that so far everything's working. But as you may  
16 be able to appreciate at this point, we're concerned  
17 that there's a problem lurking out there, because we've  
18 seen it in other instances, where these types of  
19 investments, the veterans, for whatever reason, and  
20 maybe sometimes the reason is they come to learn that  
21 federal law says what it says, and they stop payments.

22 So we have a concern, as you do, about your  
23 clients being -- you know, getting what they bargained  
24 for and being made whole, and kind of that's what this  
25 whole investigation is about.



1           I will share with you -- I'm not sure whether  
2 Mr. Chester is aware or not. -- we filed an action, not  
3 against you, not against DeSimone Blue Chip Planning;  
4 but we filed an action concerning the investments that  
5 you sold at the end of June, and it's against Woodard  
6 and Candy Kern-Fuller and Upstate Law Group and  
7 Financial Product Distributors and Michelle Plant and  
8 Performance Arbitrage Company. It's basically -- and  
9 Mark Corbett. It's basically against everybody but  
10 you.

11       A.     Thank you.

12           MR. CHESTER: It must not have hit the  
13 website yet, because I think I was there last week.

14 BY MR. BURGESS:

15       Q.     So, you know, I'm not trying to play hide the  
16 ball here. I wanted you to know that, and I wanted to  
17 have an opportunity to meet with you and kind of get  
18 your thoughts, or at least at the time, of what you  
19 were -- you know, what you did and what you were  
20 thinking as you went into this, into selling these  
21 things.

22           Anyway, there's no question. So there's no  
23 question pending, so you don't need to say anything.  
24 But, you know, we're looking at these quite seriously,  
25 and as I've said, it's great, it's great for you, that



1 they're paying, you know, so far, as they were, you  
2 know, written to do. But there is definitely a problem  
3 out there. So, all right, let's continue.

4 Did you know before starting to sell any of  
5 these things what the assets or liabilities of  
6 Performance Arbitrage Company were?

7 A. No, I did not.

8 Q. Did you -- you said Woodard didn't tell you  
9 any specific numbers. Did he tell you any percentages  
10 of what the reserves off of any given investment would  
11 be to make good in case Performance Arbitrage Company  
12 had to make good in the event of a default by a seller?

13 A. He did not.

14 Q. Okay. Did you ask?

15 A. I asked him, well, how should we understand  
16 it? And Mr. Woodard pointed to the fact that the  
17 money, the reserves, were held in this IOLTA account at  
18 Upstate Law Group. So the connection was Upstate Law  
19 Group. The question wasn't whether they had the asset.  
20 It was what was in the reserves at the IOLTA account.

21 Q. Okay. Let's talk about your understanding of  
22 that IOLTA account. What is your understanding of an  
23 IOLTA account? How is it going to protect the  
24 investor?

25 A. When I investigated it and what I liked about

1 it for client protections was its regulation; that, you  
2 know, checking on it, the State Bar, I was led to  
3 believe that if somebody was, say, 10 cents short or  
4 10 cents over, they would have to respond to it or, you  
5 know, the discrepancy, you know, they would have to  
6 rectify the discrepancy. What was also important to  
7 me, Mr. Burgess, is that they -- the segregated  
8 accounts; that each seller, each pension, went to  
9 each -- it wasn't put together. So that separation and  
10 that accountability.

11 And maybe there is some question about how  
12 regulated they are by any State Bar, but I was under  
13 the impression and I was led -- you know, on just good  
14 basis, talking to people, that State Bars take their  
15 IOLTA accounts seriously.

16 And it was also important to me that some  
17 person couldn't just go in there and take my clients'  
18 funds, like mysteriously. It was good to know that  
19 Performance Arbitrage didn't have the pile of money and  
20 David Woodard didn't have the pile of money; that it  
21 was -- and at the time it seemed appropriate to me  
22 that, you know, an attorney in good standing, they do  
23 this type of thing for money and payouts and that it  
24 was in their purview to do, as opposed to like, say,  
25 Mark's general account or some attorney's general

1 account, where they have everything mixed in and it's  
2 a --

3 Q. Right, for operating expenses of the law  
4 firm, et cetera; that the client funds are segregated,  
5 that was important to you?

6 A. Yes. I felt it gave our clients protection.

7 Q. Okay. Your June 20th letter that we're on,  
8 Exhibit 2, on the second page, in addition to  
9 discussing your understanding that the IOLTA account  
10 was some level of protection for the investors, you go  
11 on to say in the last sentence of the second paragraph  
12 on Page 2 that "Upstate Law Group maintains Lawyer's  
13 Professional Liability Insurance as an added protection  
14 to clients served by their IOLTA accounts."

15 What, if any, information do you have about  
16 Upstate Law Group's liability insurance?

17 A. As I remember, David Woodard related to me  
18 that they had \$5 million of E & O insurance, as  
19 attorneys in their practice, and that that -- this is  
20 how I understand it; that that coverage would also  
21 include any infractions or maladies in the IOLTA  
22 account.

23 Q. Okay. Did you do anything to verify with  
24 Upstate Law Group the information you received from  
25 Mr. Woodard about their liability coverage?



1           A.       I did not.

2           Q.       Were your clients, DeSimone Blue Chip  
3     Planning's clients who invested in these products, to  
4     your knowledge, were they clients of Upstate Law Group?

5           A.       It's my understanding, looking at the  
6     documents and kind of talking to David Woodard, that  
7     Upstate Law Group performed some type of due diligence,  
8     prepared documents, prepared -- some administrative  
9     duties, and that it almost can be that there might have  
10    been even dual represent -- they might have had, you  
11    know -- they provided other services, kind of like you  
12    see in real estate transactions sometimes, if parties  
13    agree.

14          Q.       Okay. Have you seen anything in writing in  
15    any of these transactions between Upstate Law Group and  
16    the buyer/investor where Upstate Law Group says we're  
17    going to represent you, buyer, or, you know, any kind  
18    of an engagement like that, anything in writing?

19          A.       I have not seen that.

20          Q.       So you don't know whether Upstate Law Group  
21    actually represented the interests of your clients, of  
22    your clients, of the buyers?

23          A.       It's my understanding they had a limited  
24    capacity in document preparation, administration,  
25    payments, in those type of regards.



1           Q.       Okay.  So Upstate Law Group may have acted in  
2       some capacity for the benefit of the buyers, without  
3       actually being their lawyers?

4           A.       That's my understanding.

5           Q.       Do you know the current kind of business  
6       status of Performance Arbitrage Company now?

7           A.       Do I know their current status?

8           Q.       Yeah.  Are they -- do you know if they're  
9       operating; do you know if they've gone out of business?  
10       Do you know what's happened to them?

11          A.       I do.

12          Q.       And what is it?

13          A.       They have -- I'm under the understanding,  
14       again, from David Woodard, that they have moved to  
15       South Carolina to be more -- to be logistically closer  
16       to Upstate Law Group and under the laws of South  
17       Carolina.  And they call themselves, I believe, Life  
18       Options.  There's new -- they've made some changes,  
19       and, you know, again from David, seems to be for the  
20       better.

21          Q.       Okay.  Do you know what prompted the changes?

22          A.       Again, from David Woodard, he related to me  
23       that it was management change; investor change,  
24       management change.

25          Q.       Do you know whether there were any problems

1 with buyers not getting paid by, first, the  
2 veteran/sellers, and then by Performance Arbitrage?

3 A. No. No. The feedback I've had with David  
4 Woodard under the agreements we've had, it's been very  
5 positive.

6 Q. Okay. So he hasn't told you about any  
7 problems where Performance Arbitrage failed to perform  
8 for the buyers?

9 A. That's correct.

10 Q. Have you asked Woodard about that issue; in  
11 other words, have you asked Woodard whether Performance  
12 Arbitrage Company has had any problems failing to pay  
13 buyers when the veteran stopped paying on their  
14 investments?

15 A. My understanding of Performance Arbitrage and  
16 what's going on is within the structure David Woodard  
17 has. He's not mentioned to me anything negative.

18 Q. Okay. Have you asked him? My question was  
19 whether you have asked him whether Performance  
20 Arbitrage has failed to pay investors when the veteran  
21 failed to pay the investors? It's just did you ask him  
22 that?

23 A. I don't remember exactly that way.

24 No, I didn't ask him that.

25 Q. Okay. And then in a more general way --

1 because that was a pretty specific question. In a more  
2 general way, have you asked him, you know, are there  
3 any problems with Performance Arbitrage Company?

4 A. Right. I wanted to know, on behalf of my  
5 clients, how reliable are they, how responsive they are  
6 to client inquiries. And everything he's related to me  
7 has been positive. He's not shared with me any horror  
8 stories.

9 Q. Okay. Your June 20th letter, Exhibit 2, on  
10 Page 4, in the last line, last two lines, it says,  
11 basically, PAC is not a Guarantee Association or  
12 Insurance Company. And then you give the website  
13 mypaconline.com.

14 Have you been to that website lately?

15 A. Not lately. And I think with the changes,  
16 they changed the website too.

17 Q. Okay. We may come back to Exhibit 2, but  
18 let's move on for the time being.

19 Let's talk about the clients of you and of  
20 DeSimone Blue Chip Planning who purchased the  
21 investments we're talking about. I'm going to ask you  
22 if this list is complete: The Moreno Legacy Trust,  
23 with Charles Zimmerman as power of attorney, purchased  
24 five of these types investments, all on or about  
25 March 17th, 2017. I can go through the numbers, the



1 amounts, if you want, but the sources of the payments  
2 were either the Defense Finance and Accounting Services  
3 agency, the Veterans Administration, or in one instance  
4 the National Basketball Association in another state of  
5 Connecticut. Is that accurate?

6 A. Yes.

7 Q. And then you sold a \$75,000 investment to  
8 Michael Bradley?

9 A. Yes.

10 Q. On May 5th, 2017, and the source of payments  
11 was the Veterans Administration. Is that consistent  
12 with your recollection?

13 A. Yes.

14 Q. And then on May 23rd, 2017, you sold a  
15 \$53,000 investment in a Veterans Administration pension  
16 or disability benefit to a woman named Marion Jean  
17 Hogue; is that correct?

18 A. That's correct.

19 Q. And then on May 2nd, 2017, you sold a \$39,000  
20 investment in an income stream from the Veterans  
21 Administration to a Frances Schlack; is that right?

22 A. That's correct.

23 Q. Other than the ones we've just talked about  
24 to the Moreno Legacy Trust, Mr. Bradley, Ms. Hogue or  
25 Ms. Schlack, have you sold any of these types of



1 products to anybody else?

2 A. No.

3 Q. After you received our subpoena in June 2017  
4 or since you received our subpoena in the beginning of  
5 June 2017, you haven't sold any of these investments  
6 since then, right?

7 A. That's correct.

8 Q. Why not?

9 A. I lost interest.

10 Q. Okay. Did that loss of interest result, in  
11 part, from the fact that you had a subpoena from us  
12 about this?

13 A. I'm sure it didn't help.

14 Q. Didn't help; yeah, that makes sense.

15 Okay. Well, that's helpful. I did want to  
16 identify the universe of people that we're talking  
17 about. And, again, it's great that so far everybody's  
18 getting paid.

19 Where did -- so on these -- in these -- I  
20 forget. I want to use the term that you used, and it's  
21 escaping me, these -- I don't know if they're  
22 fulfillment kits or packages or whatever. I can't  
23 remember what the -- how you described these, the  
24 collective group of documents. Basically, the closing  
25 book documents. Does that make sense?

1           A.       The closing book, PRN number such and such?

2           Q.       Yeah. Yeah, that's what I'm trying to -- I'm  
3 just trying to come up with some shorthand that you and  
4 I can agree on to refer to, you know, the documents  
5 related to a particular one of these investments. If  
6 you want to say closing book, that works for me.

7           A.       Okay.

8           Q.       Where did the documents in the closing book  
9 come from? Did they -- I take it you didn't prepare  
10 any of them?

11          A.       I did not prepare any of them.

12          Q.       Where did they come from; who sent them to  
13 you?

14          A.       David Woodard.

15          Q.       Woodard, okay. And that's true with respect  
16 to each of the investments we've talked about for your  
17 clients, right?

18          A.       Yes.

19          Q.       Okay. How did you know which pensions or  
20 disability benefits were available for purchase?

21          A.       David Woodard.

22          Q.       How did he provide that information to you?

23          A.       He would send me out the closing PRN, or like  
24 the documents you would have for the closing kit would  
25 be prior. Would fill out those documents. And he

1 would -- as I remember it, he would affirm, hey, we can  
2 fulfill this with so-and-so. We can fulfill the order.  
3 And he had like a printout of the payments.

4 Q. Do you know how your client -- how he -- was  
5 he the one who matched your clients to the particular  
6 pension being offered?

7 A. My understanding with it, by talking to  
8 David, is that he was involved in the process with the  
9 due diligence performed by Upstate Law Group and  
10 Performance Arbitrage. So there seemed to be more than  
11 one -- the way I understood it, there was more than one  
12 party involved in that.

13 Q. Okay. And from one or two or all three of  
14 those parties, somehow the buyer was matched with the  
15 pension being offered by the veteran?

16 A. Because as -- yes, because as I understand  
17 it, they were looking for a good reason -- people who  
18 were looking for a good reason to enter into the  
19 agreement, not just any reason. So they were very  
20 selective. And, again, as he explained it to me, they  
21 rejected a lot of people who wanted to do this because  
22 it didn't fit their criteria.

23 MS. NELSON: Jamie, can I clarify?

24 So I understand what you're saying  
25 regarding the pension seller and the criteria to truly



1   become the, quote/unquote, seller. I'm still confused  
2   about how the matching between the buyer and the seller  
3   occurred. So if the seller was already approved to be  
4   a seller, at what point or how did the two of them  
5   become linked, other than through the companies? I  
6   understand that. What made them a magic fit?

7                   THE WITNESS: Well, they know who the --  
8   the seller knows who Jean Hogue is, Marion Jean Hogue.  
9   They know who the person is. And so there is some kind  
10  of documentation that, you know, this is the buyer,  
11  this is the seller, that identifies it. And this is  
12  what David would send back to me.

13  BY MR. BURGESS:

14           Q.     How would the seller know who Jean Ann Hogue  
15  is?

16           A.     As I believe it was in the documentation.

17           Q.     Okay. Just to be real clear, you didn't --  
18  before you sold any of these investments, you were not  
19  aware, or were you -- let me start that over again.

20                   Before you sold any of these investments,  
21  were you aware of any actions by other State regulators  
22  concerning these types of investments?

23           A.     I was not.

24           Q.     So you weren't aware of actions by the  
25  Arkansas Securities Commissioner, the Iowa Insurance



1 Commissioner, the Securities Division of New Mexico,  
2 the Pennsylvania Department of Banking & Securities,  
3 the Florida Office of Financial Regulation, California  
4 Department of Business Oversight, the Texas Securities  
5 Board or the Mississippi Secretary of State, between  
6 2013 and 2016, issuing orders against Voyager Financial  
7 or Gamber or SoBell or BAIC?

8 A. No.

9 Q. You didn't learn of those regulatory actions  
10 until after you got our subpoena in the beginning of  
11 June 2017, right, and you learned of that through your  
12 online research?

13 A. After the subpoena.

14 Q. Yes. Correct?

15 A. Yes.

16 MR. BURGESS: Let's mark this one.

17 MR. CHESTER: When you're done with this  
18 one, restroom break?

19 MR. BURGESS: Sure.

20 (Deposition Exhibit 4 was marked for  
21 identification.)

22 MR. BURGESS: Actually, let's just --  
23 before we get into it, because there might be several  
24 questions on this, so let's just go off the record now  
25 and we'll take a short break.

1 (A recess was taken from 12:29 p.m. to  
2 12:38 p.m.)

3 MR. BURGESS: Okay, we can go back on  
4 the record.

5 BY MR. BURGESS:

6 Q. Mr. DeSimone, before we broke you had been  
7 handed what's been marked as Exhibit No. 4 to your  
8 examination under oath. Do you recognize this  
9 document?

10 A. Yes.

11 Q. What is it?

12 A. Buyer's Guide.

13 Q. Do you know who produced it?

14 A. I don't know, but I did obtain it from David  
15 Woodard.

16 Q. Okay. And there's a logo for Financial  
17 Product Distributors, LLC at the bottom of the first  
18 page, correct?

19 A. Yes.

20 Q. And Financial Product Distributors, LLC is  
21 Mr. Woodard's company?

22 A. Yes, it is.

23 Q. How did you use this Buyer's Guide? Did you  
24 read it?

25 A. Yes. It was the format to make the -- to

1 present to the client.

2 Q. Did you provide this Buyer's Guide to any of  
3 your clients?

4 A. Yes.

5 Q. To all of them?

6 A. Yes.

7 Q. On the fourth page in on this document, under  
8 the heading Transaction Assistance Team.

9 MR. CHESTER: Just for the record, the  
10 Bates number, Counsel?

11 MR. BURGESS: It's Bates page -- this  
12 particular page is Bates page ending in 327.

13 MR. CHESTER: Thanks.

14 BY MR. BURGESS:

15 Q. This paragraph under the header  
16 Transaction Assistance Team describes or references  
17 factoring companies that specialize in facilitating the  
18 purchase of payments derived from certain structured  
19 assets, and then it references certain websites;  
20 www.buyyourpension.com, cashforyourpension.com [sic]  
21 and then something called bradling.com.

22 Do you know what any of those websites are or  
23 who's behind them?

24 A. No, I don't.

25 Q. The paragraph continues, quote, FPD, along

COASH & COASH, INC.  
www.coashandcoash.com

602-258-1440  
Phoenix, AZ

1 with these factoring companies and other business  
2 partners, has decades of experience in the financial  
3 services industry and have been involved with  
4 Structured Assets since 2009.

5 Do you know anything about this purported  
6 decades of experience that either FPD or the factoring  
7 companies or other business partners has? Do you know  
8 anything about that?

9 A. No, I don't.

10 Q. The last sentence in that paragraph says,  
11 quote, To further protect Buyers, we engage independent  
12 counsel through Upstate Law Group to review all of the  
13 supporting documentation in the Closing Book to ensure  
14 the due diligence process is completed as set out in  
15 the Buyer's Purchase Assistance Agreement, closed  
16 quote.

17 Actually, that's the second to last sentence  
18 of that paragraph.

19 A. Uh-huh.

20 MR. BURGESS: Let's mark this. This is  
21 No. 5.

22 (Deposition Exhibit 5 was marked for  
23 identification.)

24 BY MR. BURGESS:

25 Q. Mr. DeSimone, I've just handed you a set of  
COASH & COASH, INC. 602-258-1440  
www.coashandcoash.com Phoenix, AZ



1 documents, all marked as Exhibit No. 5. The first one  
2 being a sales assistance agreement. The Bates number  
3 on the first page of that document ends in 719. The  
4 second document in the set is a structured asset  
5 purchase application. The Bates number on the first  
6 page ends in 810. Then there's a purchase assistance  
7 agreement. The first page Bates number ends in 829.  
8 The next document in the set is a contract for sale of  
9 payments. The first Bates page ends in 813. And then  
10 the last document in the set is a disclosure of risks  
11 statement. The Bates page on the -- the Bates number  
12 on the first page of that particular document ends in  
13 834. And, again, these are all marked together as  
14 Exhibit No. 5.

15 Is that what you're looking at?

16 A. Right here, yes. You lost me on the Bates,  
17 but, yes, I have it here.

18 Q. And the Bates numbers, just for your own  
19 reference, you'll see at the bottom of each page  
20 there's a number that begins ACC000719.

21 A. Yes, sir.

22 Q. Or whatever the number is. That number is  
23 what we refer to as a Bates page number.

24 A. Thank you.

25 Q. And I'll represent to you that these are the

1 documents that you produced to us on -- some of the  
2 documents that you produced to us on June 20th, and  
3 this particular set that we've marked as Exhibit No. 5  
4 are documents taken from the PRN No. 1785.

5 And I just picked this one as an example,  
6 because I want to ask you about the -- I want to tie  
7 the purchase assistance agreement back to this  
8 statement in the brochure we were just looking at,  
9 Exhibit No. 4, which says that Upstate Law Group is  
10 there, in part, to, quote, ensure the due diligence  
11 process is completed as set out in the purchase  
12 assistance agreement. Okay?

13 A. Yes.

14 Q. So let's look at the purchase assistance  
15 agreement in Exhibit 5, and if you could --

16 MR. CHESTER: Purchase -- I'm sorry?

17 MR. BURGESS: Yeah, the purchase  
18 assistance agreement.

19 BY MR. BURGESS:

20 Q. Let me know when you're there.

21 And you can take as much time as you need to  
22 look at this, but my question is, where in this  
23 purchase assistance agreement does it describe what due  
24 diligence Upstate Law Group is supposed to be doing on  
25 this investment?

1           Yeah, do you see anywhere in that purchase  
2 assistance agreement where it provides for what due  
3 diligence is to be done? Because I don't.

4           A.     It seems to correspond with what we had  
5 discussed prior; that they prepare documents and some  
6 administration. Right, I agree with you. No.

7           Q.     Okay. Then with respect to, in the brochure,  
8 the statement about that, you know, Upstate Law Group  
9 is there to ensure the due diligence process is  
10 completed as set out in the buyer's purchase assistance  
11 agreement, do you think that's misleading if the  
12 buyer's purchase assistance doesn't set out what due  
13 diligence is to be done?

14          A.     I can see your point. Again, not being an  
15 attorney and not being a person like yourself, I don't  
16 know what to say.

17          Q.     Okay. That's -- it is what it is. I mean  
18 the documents, each document says what it says. The  
19 way I read it, and maybe the way you read it, from what  
20 I'm understanding, is they don't exactly jive in how  
21 they correspond to each other.

22                 On the Bates page, the Bates-numbered page  
23 that ends in 331 in Exhibit 4, this is the brochure,  
24 and that page has the giant header Risk Factors on it.

25          A.     Yes.



1           Q.     The second paragraph on that page says, "To  
2 mitigate these risks we have partnered with Performance  
3 Arbitrage Company, headquartered in Flowood,  
4 Mississippi. PAC's ownership and management have  
5 careers spanning several decades in the financial  
6 services industry."

7                     It goes on to describe some of that  
8 experience and then goes on to state that they've been  
9 active in the structured asset space since 2012.

10                    And I think you testified before that it was  
11 your understanding that Michelle Plant was a principal  
12 of PAC, correct; she was the point of contact in the  
13 documents for PAC?

14           A.     She was the person to contact in the  
15 documents if there was a problem and you needed PAC.

16           Q.     And in this description, this description  
17 describes, without naming her, but describes the  
18 experience of PAC's ownership and management, correct?

19           A.     Yes.

20           Q.     Would you have liked to have known that part  
21 of Michelle Plant's or part of PAC's ownership and  
22 management had been associated with Andrew Gamber and  
23 Voyager Financial when Mr. Gamber and Voyager Financial  
24 were getting hit with cease and desist orders by  
25 several State securities regulators regarding the sale



1 of these types of products?

2 A. I would have liked to have known, yes.

3 Q. That would have -- would that have made a  
4 difference in whether you decided to sell any of these  
5 products or not?

6 A. Yes.

7 Q. Did you receive commissions for the roughly,  
8 I think -- I don't have the total in front of me, but  
9 roughly 350, \$380,000 of the investments that you sold  
10 to Moreno Trust and Mr. Bradley and Ms. Hogue and  
11 Ms. Schlack? You received or DeSimone Blue Chip  
12 Planning received commissions for those sales, correct?

13 A. Correct.

14 Q. And who did you or your company receive the  
15 commissions from? Did they come from Upstate Law  
16 Group; did they come from Financial Product  
17 Distributors?

18 A. As I remember, it came from Upstate Law  
19 Group, and I also believe one did come from Performance  
20 Arbitrage. Why, I don't know, but...

21 Q. Okay. And what was the commission  
22 percentage, if you recall, based off the amount of the  
23 product sold?

24 A. In the length of the years.

25 (An off-the-record discussion ensued.)

1 BY MR. BURGESS:

2 Q. Let's -- we've already marked it. It's  
3 Exhibit No. 3. Take a look at Exhibit No. 3, please.  
4 This is the agent's agreement.

5 MR. CHESTER: Let me put this away.

6 THE WITNESS: Now that I know what that  
7 number is.

8 BY MR. BURGESS:

9 Q. Let's look at that number on Exhibit No. 3.  
10 Please look at Bates Page ending in 883, the second  
11 page of the document.

12 A. Yes.

13 Q. It's got a table that lays out the  
14 compensation or the commissions based off of the value  
15 of the investment sold, correct?

16 A. Correct.

17 Q. So for an 8-year stream of payments, you  
18 would receive a payment of 6 and a half percent,  
19 correct?

20 A. Yes.

21 Q. And for a 10-year stream of payments, you  
22 would receive a commission of 7 percent, correct?

23 A. Yes.

24 Q. And that corresponds to the actual amounts  
25 that you received as commissions from either ULG or

1 from PAC?

2 A. Yes.

3 Q. Mr. DeSimone, how did you market these types  
4 of investments to the people that you ended up selling  
5 them to; how did that -- you know, how did, for  
6 instance, the Moreno Trust or Mr. Bradley or  
7 Ms. Schlack or Ms. Hogue come to decide to buy one of  
8 these?

9 A. Long-term relationships.

10 Like, for example, the Moreno Trust, Michael  
11 Moreno, who the trust is named after, I was his life  
12 insurance agent for many years. He tragically died  
13 early in life, and so I have been his agent and worked  
14 with his family for quite a few years.

15 Q. So it was just the -- your sale of these was  
16 based on long-term client relationships with these  
17 people?

18 A. Yes.

19 Q. You weren't doing seminars or anything like  
20 that?

21 A. I was not.

22 Q. Okay. Let's talk about the risk disclosure  
23 statement, and we can look at -- in Exhibit No. 5 it  
24 should be the last document in the set that's marked as  
25 Exhibit No. 5.

1           On the first page of this risk disclosure  
2 statement, under the header Restrictions on  
3 Assignability/Collectability, it says, "Pension  
4 payments fall under regulations that restrict the  
5 assignment of the scheduled payments due thereunder."

6           Skipping down some in the paragraph, it  
7 continues, quote, Consequently, this transaction is a  
8 purchase of a contractual right to a payment obligation  
9 and not the payment per se. Although certain courts  
10 have held transactions of this nature to be  
11 enforceable, even in the presence of an anti-assignment  
12 clause, there is no assurance that a future court would  
13 permit the enforcement of payment rights under this  
14 arrangement, closed quote.

15           My question for you is, if federal laws or  
16 federal regulations don't just restrict the assignment  
17 of these types of pensions or military benefits, but  
18 actually prohibit the assignment, if that's true, would  
19 that fact have impacted your decision to sell any of  
20 these types of products?

21       A.     It certainly would.

22       Q.     How so?

23           You wouldn't have sold them, right?

24       A.     Why look for trouble.

25       Q.     If the sentence I just read from the



1 disclosure risks statement says that regulations  
2 restrict the assignment, if, in fact, federal law  
3 prohibits the assignment, do you think the term -- the  
4 use of the term restricts is misleading?

5 A. Again, Mr. Burgess, I'm not an attorney or  
6 have the education you have or Mark has.

7 Q. But just as a -- just in your own common  
8 sense reading, you know, if something's restricted --  
9 if something is prohibited, that's more -- that's  
10 something different than just being restricted, right?

11 A. Listening to you speaking right now, I mean I  
12 certainly can see what you're saying. You know, but  
13 with -- yes, I understand what you're saying.

14 Q. Do you think that the use of the word  
15 restrict, when, actually, if federal law prohibits,  
16 doesn't just restrict, but prohibits, do you think the  
17 use of the term restrict is misleading?

18 A. Not being an attorney and relying on Woodard  
19 and Upstate Law Group, I don't know enough about the  
20 fine art of what you're saying. I mean common sense, I  
21 can see your point. But I don't know, is my answer.

22 Q. You don't know whether it's misleading?

23 A. I don't know about restrict versus  
24 prohibit --

25 Q. Okay.

1           A.       -- is my answer. I don't know.

2           Q.       Okay. The paragraph we read also references  
3       that -- or states, "Although certain courts have held  
4       transactions of this nature to be enforceable, even in  
5       the presence of an anti-assignment clause, there is no  
6       assurance that a future court would permit the  
7       enforcement of payment rights under this agreement."

8                   In reading that, would you, either as the  
9       person who sold these investments or putting yourself  
10      into the shoes of one of your clients, would you like  
11      to know that other courts that are not referenced here  
12      have actually held that these transactions are  
13      unenforceable?

14          A.       I certainly want to see our clients have all  
15      the benefits. I don't know how to answer that.

16          Q.       Well, the risk disclosure is talking about  
17      that certain courts have held these to be enforceable.  
18      Would you like to know that other courts have held them  
19      to be unenforceable?

20          A.       I can see your point.

21          Q.       That would -- having that in -- having all  
22      the information would help you make a decision, right?

23          A.       Yes.

24          Q.       As opposed to just half the information?

25          A.       I could see your point, yes.

1 Q. Okay.

2 The next paragraph in the risk disclosure  
3 talks about or has a header that says Non-Receipt of  
4 Scheduled Payments/Collections, and it reads, quote,  
5 Non-receipt of Payments could occur for a number of  
6 reasons ranging from administrative delays, to the  
7 death of a Seller/Payee/Annuitant or an intentional  
8 payment diversion. An intentional diversion occurs  
9 when a Seller redirects any Payments subject to a  
10 contract with a Buyer to any entity other than the  
11 Buyer in violation of the Seller's contractual  
12 agreement with the Buyer. A diversion is viewed as an  
13 intentional default/breach by the Seller. It is the  
14 responsibility of the Buyer to monitor his or her  
15 account for the receipt of the expected Payments and to  
16 take action for the collection of Payments expected but  
17 not received. Buyer's ability to enforce judgments,  
18 realize success in the garnishment process (if allowed  
19 in the forum state) and prevail in the redirecting of  
20 the Payments cannot be guaranteed.

21 If federal law prohibits creditors from  
22 attaching or garnishing or collecting against military  
23 pensions or military disability benefits, do you think  
24 this disclosure about the buyer's ability to enforce  
25 judgment can't be guaranteed, do you think that's an



1 understatement?

2 A. I mean you have a very persuasive, educated  
3 way of saying it. Yeah, I can see your point. I can  
4 see your point. But, again, not as a legal background,  
5 I find it very difficult with all these different  
6 shades of the word and et cetera.

7 Q. Well, federal law, I mean I'm not asking you,  
8 you know, from a legal perspective what you think. But  
9 just as a consumer or somebody selling this to a  
10 consumer, do you think it's misleading to be talking  
11 about the possibility or the uncertain ability of a  
12 buyer to bring a collection action in the event that a  
13 veteran defaults if federal law prohibits the veteran  
14 from transferring the pension in the first place or  
15 assigning the pension in the first place; and, B, any  
16 creditor from trying to collect the payments?

17 I mean that's misleading, right? If you  
18 can't -- you can't sell what you don't have the right  
19 to sell?

20 A. Yes, sir. I think from a sales point, people  
21 would read those two and not want to deal with it.  
22 They would just -- just reading it as it is would be  
23 enough of a --

24 Q. If they knew that there was a federal law  
25 that, at best, clouds this disclosure and says,



1 actually, you know, creditors can't attach these types  
2 of payments at all, you're saying that you think that a  
3 buyer, somebody looking at buying one of these things,  
4 would just say I don't want to deal with this?

5 A. I mean out of respect to you, that what  
6 you're saying would be a -- is a strong disclosure.  
7 But for people reading this, this would be enough -- I  
8 mean this would be a deterrent. But I'm not -- but,  
9 again, I don't know, because I don't know how to do all  
10 this. I relied on Woodard and Upstate Law Group that  
11 these documents were accurate and that they were within  
12 the letter and the spirit of the law.

13 Q. And when this paragraph talks about, you  
14 know, a diversion, an intentional diversion, and, you  
15 know, it's considered a -- it's viewed as -- an  
16 intentional default/breach is viewed as a -- I'm sorry,  
17 a diversion is viewed as an intentional default/breach  
18 by the seller, again, if federal law prohibits the  
19 pension or payment from being assigned or sold in the  
20 first place, it's not really accurate to characterize  
21 that as a diversion, right?

22 A. If that's the case about federal law, then  
23 you're absolutely right.

24 Q. Okay. Thank you.

25 MR. BURGESS: Do you have anything?

1 MS. NELSON: I don't have anything.

2 MR. BURGESS: No?

3 BY MR. BURGESS:

4 Q. We've talked about that you're not aware that  
5 any of your clients have missed any payments under the  
6 investments that you sold, right?

7 A. Yes, sir.

8 Q. And that's a good thing.

9 A. Yes, sir.

10 Q. What will you do, if anything, in the event  
11 that your clients start missing payments as a result of  
12 these investments that they're in?

13 A. Want to give them the same eager service we  
14 did; want to follow up with Woodard and Upstate Law  
15 Group and Performance Arbitrage and make sure they get  
16 paid.

17 Q. Okay.

18 MS. NELSON: How will you make sure?

19 BY MR. BURGESS:

20 Q. Yeah.

21 A. By getting on the telephone right away and  
22 doing whatever is necessary to follow up for our  
23 clients and not ignore it, not just let it fester and  
24 go on.

25 Q. Okay. What if, hypothetically -- and let's

1 hope this is all hypothetical. What if,  
2 hypothetically, you know, Woodard and PAC and Upstate  
3 Law Group say, sorry, nothing we can do, you know; what  
4 would you do then?

5 A. I would have to talk to an attorney.

6 Q. Fair comment.

7 What about your commissions on these things?  
8 Would you dip into your own funds to try to repay some  
9 of these people on what's been -- if payments start  
10 being missed, or you would want to talk to your  
11 attorney about that?

12 A. Yes, sir.

13 Q. Okay.

14 MR. BURGESS: All right. I don't think  
15 we have anything else today. So we will reserve the  
16 right to reopen if we need to.

17 THE WITNESS: Yes, sir.

18 MR. BURGESS: But I appreciate your  
19 cooperation today and coming up here and speaking with  
20 us and both of your cooperation in rescheduling from a  
21 month ago, month-plus ago. But unless Mr. Chester  
22 wants to ask you anything on the record, we can be done  
23 for today.

24 MR. CHESTER: Let me speak to my client  
25 outside real quick before you close up.

1 MR. BURGESS: Sure.

2 (A recess was taken from 1:10 p.m. to  
3 1:14 p.m.)

4 MR. BURGESS: We can go back on the  
5 record.

6

7 EXAMINATION

8 BY MR. CHESTER:

9 Q. Mr. DeSimone, you were asked about whether or  
10 not any of your clients failed to receive payments,  
11 triggering default. Do you remember that line of  
12 questioning?

13 A. Yes.

14 Q. Was there any issues with any payments to  
15 clients that may not have been what you considered  
16 default, but resulted in some sort of problem?

17 A. Yes, sir.

18 Q. Okay. Can you look at the court reporter?  
19 Can you explain what that problem was and how  
20 and if it was rectified?

21 A. Yes. I did get a call from Michael Bradley  
22 that he did not receive a payment on the 15th.

23 Q. And approximately what month and year was  
24 this?

25 A. Within, roughly, three, four months.



1 Q. Ago?

2 A. Ago.

3 Q. From today?

4 A. From today.

5 Q. And what did Mr. Bradley tell you and what  
6 did you do in response to that?

7 A. I thanked him for letting me know. I  
8 responded immediately by calling David Woodard and  
9 letting him know the urgency of the situation.

10 Q. And what did Mr. Woodard tell you, if  
11 anything, he was going to do?

12 A. He was going to inquire and get back to me  
13 shortly.

14 Q. Okay. What was the next communication you  
15 received regarding the status of the problem?

16 A. There was an administrative problem at ULG.

17 Q. No, I asked you what was the next contact  
18 that you received from someone regarding this problem;  
19 phone call, e-mail?

20 A. David Woodard had called and, also, I was in  
21 contact with the client. He let me know that he  
22 received his payment.

23 Q. Okay. About how much longer after your phone  
24 call to Mr. Woodard do you believe your client received  
25 the missing payment?

1           A.     It was within a week, to the best -- yeah,  
2     within the week.

3           Q.     Did you have a follow-up conversation with  
4     Mr. Woodard after the payment had been made?

5           A.     I did. I told him don't do that again.

6           Q.     No, did you have a phone call with him?

7           A.     I did, yes.

8           Q.     Did he explain to you what the problem was or  
9     why the payment was delayed?

10          A.     Yes.

11          Q.     Okay. What did he tell you?

12          A.     ULG was having an administrative issue with  
13     one of the employees and that it would all be handled  
14     by a new payroll firm out of Alabama that was just set  
15     up to do massive payroll, accounting and distribution.

16          Q.     Anything else that you can recall about your  
17     conversation with Mr. Woodard on that issue?

18          A.     That it was important for them to go to this  
19     new Alabama payroll company because the gentleman at  
20     ULG was dogging it. He was just not on the ball.

21                 And Mr. Bradley may have been inconvenienced  
22     twice by this ULG employee. And we got -- you know,  
23     speaking with Woodard, Woodard told me about these  
24     changes that was made, and it's been rectified to date.

25                 MR. CHESTER: I don't have any further

1 questions, Counsel.

2

3

RE-EXAMINATION

4 BY MR. BURGESS:

5 Q. Mr. DeSimone, do you have the name of this  
6 Alabama payroll company?

7 A. I don't remember it exactly. It's like  
8 Alabama Payroll. I mean it's nothing --

9 Q. How creative.

10 A. Yeah, it's nothing that you -- you know, you  
11 go through the phone book and you would see 50 similar  
12 companies.

13 Q. Do you have any documentation from the new  
14 payroll company?

15 A. I do not.

16 Q. You weren't copied on -- you haven't been  
17 copied on anything that --

18 A. I have not been copied on anything. It's  
19 just what David Woodard had related to me.

20 Q. And you said initially, when Mr. Chester was  
21 asking you about a problem, I understood there to be  
22 one problem; but then later in your testimony you  
23 indicated that Mr. Bradley may have been, you used the  
24 word, inconvenienced twice?

25 A. Inconvenienced. They may have been late

1 twice with him.

2 Q. And you said that in one of your  
3 conversations with David Woodard, you told Woodard,  
4 quote, Don't do this again?

5 A. Well, let me -- I said these clients, I want  
6 them paid. The money's there. I want -- I don't care  
7 what the excuse is. Get it to them.

8 The money was there. They had an employee  
9 administrative problem with somebody whose, I'm sorry,  
10 maybe their mother or family members died or whatever  
11 their personal, but it was interfering with business.  
12 And Woodard, as he related to me, we have this Alabama  
13 payroll company that I can't remember the name. And  
14 things have been fine since.

15 Q. Okay.

16 MS. NELSON: When you say the money was  
17 there and it was a clerical error, how do you know the  
18 money was there at that time?

19 THE WITNESS: I believe because when I  
20 talked to David Woodard, he has a way of verifying  
21 payments, and he had related to me that it was a  
22 clerical.

23 MS. NELSON: So he has a way of  
24 verifying the receipt of payments or the issuance of  
25 those payments or both?



1 THE WITNESS: As David related to me,  
2 there's a way that he can do both, how they come in or  
3 who got paid or...

4 BY MR. BURGESS:

5 Q. So is the payroll company receiving the  
6 payments from the veterans and then disbursing them to  
7 the investors?

8 A. As I understand it, by my discussion with  
9 David Woodard, they're ACHing out of the pensioner's  
10 checking account, and then it goes through the process.  
11 I'm not sure exactly what the nuts and bolts of the  
12 process are, but it eventually gets to the buyer.

13 Q. So then what's the role of the IOLTA account  
14 if it's -- if the payment coming into the veteran goes  
15 to the veteran's own bank account and then is ACHed --

16 A. No. Okay. Let's clarify that. It's still  
17 going to the IOLTA account. Payments are into the  
18 IOLTA, the IOLTA to the buyer. It's not direct. As I  
19 understand it, it's not direct from pensioner to buyer.

20 Q. Right.

21 So the payment comes from the Veterans  
22 Administration or from the DFAS agency. It goes from  
23 one of those two federal agencies to the veteran's own  
24 bank account, correct?

25 A. Yes, sir.

1           Q.     And then under the contract for sale of  
2     payments, the veteran has granted a right to ULG to get  
3     an automatic draft from the veteran's bank account each  
4     month after the payment from the VA or the pension has  
5     come in and hit, and ULG then takes that draft and puts  
6     it into its IOLTA account?

7           A.     As I understand it, yes.

8           Q.     And then from the IOLTA account it was being  
9     disbursed to the investors?

10          A.     Yes, sir.

11          Q.     But now it's being -- where now under this  
12     new Alabama payroll company, how is the payment  
13     getting -- where does the payment go? Does it go to  
14     ULG's ACH account? I'm sorry, let me start that over.

15                 Does it go to ULG's IOLTA account and then to  
16     the payroll company and then to the investor, or what's  
17     your understanding of how that money flow works?

18          A.     Seller to the IOLTA account, IOLTA account to  
19     the buyer, as it always was.

20          Q.     But now the IOLTA account is being  
21     controlled, instead, by ULG by this payroll company in  
22     Alabama?

23          A.     Not controlled, but they had set it up. It's  
24     still with ULG. They removed this one worker and then  
25     came in with this company to set up what he was doing

1 for ULG.

2 Q. Okay. But whatever information you're  
3 getting you're getting from David Woodard?

4 A. Yes.

5 Q. And you're relying on his description of how  
6 this is all working now?

7 A. Yes, I am.

8 Q. Since you produced documents to us in June of  
9 2017, do you have -- have you had additional e-mail or  
10 other correspondence with Mr. Woodard? You must have.

11 A. I have the new documents that they're using.

12 Q. Okay. Will you produce those pursuant to  
13 the -- we can call it the subpoena from 2017. You  
14 know, we view it as a continuing subpoena, so...

15 Mr. Chester nodded yes, that you will produce  
16 those documents?

17 MR. CHESTER: Sure.

18 THE WITNESS: I'd be glad to.

19 BY MR. BURGESS:

20 Q. Okay. Thank you.

21 As well as any e-mail or other correspondence  
22 with Mr. Woodard, his company, Upstate Law Group,  
23 Performance Arbitrage Company, any correspondence or  
24 e-mails that you have had with those individuals, will  
25 you produce those also?

1           A.       Yes.

2                   MR. BURGESS:   Okay.   Then I think we can  
3   be done for today, with the right to reopen if we need  
4   to.   Again, I thank you for your cooperation and hope  
5   you have a safe trip back to Marana.

6                   THE WITNESS:   Thank you, Mr. Burgess.

7                   MR. BURGESS:   You're welcome.

8                   (The examination under oath concluded at  
9   1:27 p.m.)

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing proceedings  
4 were taken before me; that the foregoing pages are  
5 a full, true, and accurate record of the proceedings,  
6 all done to the best of my skill and ability; that  
7 the proceedings were taken down by me in shorthand  
8 and thereafter reduced to print under my direction.

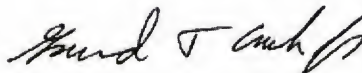
9 I CERTIFY that I am in no way related to  
10 any of the parties hereto, nor am I in any way  
11 interested in the outcome hereof.

12 I CERTIFY that I have complied with the  
13 ethical obligations set forth in ACJA 7-206(F)(3)  
14 and ACJA 7-206 (J)(1)(g)(1) and (2). Dated at  
15 Phoenix, Arizona, this 31st day of July, 2018.

16 

17 \_\_\_\_\_  
18 JODY L. LENSCHOW, RMR, CRR  
19 Certified Reporter  
20 Arizona CR No. 50192

21 I CERTIFY that Coash & Coash, Inc., has  
22 complied with the ethical obligations set forth in  
23 ACJA 7-206 (J)(1)(g)(1) through (6).

24 

25 \_\_\_\_\_  
COASH & COASH, INC.  
Registered Reporting Firm  
Arizona RRF No. R1036

**COMMISSIONERS**  
TOM FORESE – Chairman  
BOB BURNS  
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**MATTHEW J. NEUBERT**  
DIRECTOR

**SECURITIES DIVISION**  
1300 West Washington, Third Floor  
Phoenix, AZ 85007  
TELEPHONE: (602) 542-4242  
FAX: (602) 594-7470  
E-MAIL: [securitiesdiv@azcc.gov](mailto:securitiesdiv@azcc.gov)

**ARIZONA CORPORATION COMMISSION**

June 2, 2017

**Via Certified Mail, Return Receipt Requested**

Custodian of Records  
Joseph DeSimone  
DBA DeSimone Blue Chip Planning LLC  
[REDACTED]

AZ

**Re: Joseph DeSimone**

**/File No. 8695**

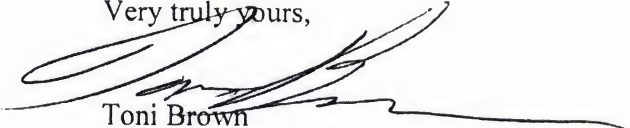
Dear Mr. DeSimone:

Enclosed you will find a Subpoena Duces Tecum which requires your appearance before the Securities Division on June 26<sup>th</sup>, 2017. In lieu of personal appearance, you may provide the requested documents along with the enclosed Affidavit of Custodian of Records by the due date by mailing them to Toni Brown, Securities Division, Arizona Corporation Commission, 1300 West Washington Street, Third Floor, Phoenix, Arizona 85007. Testimony concerning the documents will be scheduled at a later time, if necessary.

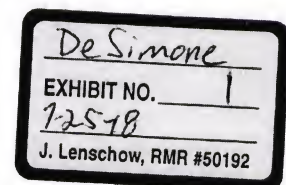
Should your institution not have any documents responsive to the subpoena, please provide written confirmation to that effect.

Should you have any questions regarding this subpoena, please feel free to contact me at (602) 364-1027 or [TBrown@azcc.gov](mailto:TBrown@azcc.gov).

Very truly yours,

  
Toni Brown  
Special Investigator

TB / Enforcement





# SUBPOENA

SECURITIES DIVISION  
ARIZONA CORPORATION COMMISSION

TO Joseph DeSimone  
DBA DeSimone Blue Chip Planning LLC

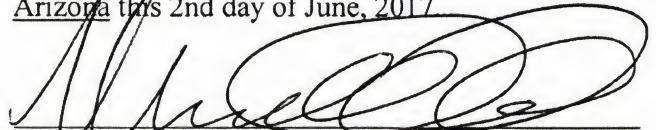
[REDACTED]  
[REDACTED] AZ [REDACTED]

In the matter of  
**Joseph DeSimone, file number 8695**  
involving possible violations of the Securities Act  
and/or Investment Management Act of Arizona.

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED to  
appear before **Toni Brown, Special Investigator** of the Securities Division of the Arizona Corporation  
Commission at 1300 West Washington, Third Floor, Phoenix, Arizona 85007, **on the 26th day of June, 2017 at**  
**10:00 AM**, to PRODUCE THE DOCUMENTS SPECIFIED IN EXHIBIT "A", which is attached and incorporated  
by reference.



The seal of the Arizona Corporation Commission is  
affixed hereto, and the undersigned, a member of  
said Arizona Corporation Commission, or an officer  
designated by it, has set his hand at Phoenix,  
Arizona this 2nd day of June, 2017.

  
Mark Dinell, Assistant Director  
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, Executive Assistant to the Executive Director, voice phone number (602) 542-3931, e-mail [kcannon@azcc.gov](mailto:kcannon@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.

Pursuant to A.R.S. § 44-1825 and A.R.S. § 44-3134, failure to comply with this subpoena may result in the application for a finding of contempt.

Pursuant to A.A.C. R14-4-304, any person required to appear at a formal interview may be represented by legal counsel.

**Exhibit "A"**  
**To Subpoena Duces Tecum to**  
**DeSimone Blue Chip Planning, L.L.C**

Produce all documents in your possession, custody, or control that are responsive to the following requests. Refer to the general instructions and definitions below.

**A. Definitions and Instructions**

1. "You" means the Custodian of Records for DeSimone Blue Chip Planning, L.L.C.
2. "DBCP" refers to DeSimone Blue Chip Planning, L.L.C. and its present and former members, managers, officers, employees, agents and other authorized representatives.
3. "ULG" refers to Upstate Law Group, LLC and its present and former members, managers, officers, employees, agents and other authorized representatives.
4. "FPD" refers to Financial Product Distributors, LLC and its present and former members, managers, officers, employees, agents and other authorized representatives.
5. "SMI" refers to Strategic Marketing Innovators, Inc. and its present and former officers and directors, parents, divisions, groups, subsidiaries, predecessors, successors, partnerships, affiliated entities, employees, agents and other authorized representatives.
6. "PAC" refers to Performance Arbitrage Company, Inc. and its present and former officers and directors, parents, divisions, groups, subsidiaries, predecessors, successors, partnerships, affiliated entities, employees, agents and other authorized representatives.
7. "Goldstar" refers to Goldstar Trust Company, LLC and its present and former members, managers, officers, employees, agents and other authorized representatives.



8. "BAIC" refers to BAIC, Inc. and its present and former officers and directors, parents, divisions, groups, subsidiaries, predecessors, successors, partnerships, affiliated entities, employees, agents and other authorized representatives.
9. "Structured Assets" refers to any entity that owns, controls, or manages the website "www.structured-assets.com", including its present and former officers and directors, members, managers, parents, divisions, groups, subsidiaries, predecessors, successors, partnerships, affiliated entities, employees, agents and other authorized representatives.
10. "Woodard" refers to David Woodard, his agents, his spouse and any other person or entity (including partnerships, trusts, funds, and other corporate entities) through which Woodard conducts or has conducted his personal or business affairs.
11. "Gamber" refers to Andrew Gamber, his agents, his spouse and any other person or entity (including partnerships, trusts, funds, and other corporate entities) through which Gamber conducts or has conducted his personal or business affairs.
12. "Pension Stream Investment" refers to any product or investment involving a current or future payment by or from a pension or benefits plan, directly or indirectly.
13. The term "document" or "documents" means all materials and tangible forms of expression in your possession, custody or control, whether drafts or unfinished versions, originals or nonconforming copies thereof, however, or by whomever prepared, created, produced, maintained, used, sent, received, dated, or stored (manually, mechanically, electronically or otherwise), including letters, e-mails, notes or records of conversations or meetings, contracts, agreements, summaries, analyses, correspondence, memoranda, books, papers, records, files, notes, messages, text messages, charts, studies, graphs, receipts, schedules, itineraries, scripts, minutes, confirmations, invoices, account statements, reports, facsimiles, telephone logs, calendars, appointment books, message slips, work sheets, bills, records of payment, video or audio

recordings, disks, diskettes, disk packs, zip drives, films, and any other electronic media storage device.

14. "Communication" means any disclosure, transfer, or exchange of information or opinion, however made, and includes oral written and electronic communications.
15. "Relating to" means concerning, discussing, evidencing, regarding, describing, referring or pertaining to, identifying, reflecting containing, constituting, considering, comprising, commenting or reporting on, or analyzing.
16. Unless otherwise specified, the subpoena requires the production of documents dated, executed, created, distributed, received, utilized, in effect, or relating to an event that occurred at any time during the period from January 1, 2012, through the present.
17. If any document is responsive to more than one category of this subpoena, indicate each category to which it responds.
18. If any of the documents called for are not produced, for whatever reason, please provide the following information as to each such document: (1) the creator(s) of the document; (2) the date that the document was created; (3) the present or last known custodian of the document; (4) the subject matter of the document; (5) all persons or entities known to have been furnished the document or copies of the document, or informed of their substance; and (6) the reason the document is not produced, including any privilege or exemption claimed, such as the attorney-client privilege or work-product. If any document called for is withheld because of a claim of attorney-client privilege, in addition to the above information, please identify the attorney and the client involved.
19. No agreement by the Arizona Corporation Commission ("Commission") or its staff purporting to modify, limit, or otherwise vary this subpoena is binding on the Commission or its staff unless confirmed or acknowledged in writing by the Commission or its staff.



## **B. Documents and Information to be Produced**

1. Without limitation as to date, produce all of the following for DBCP:
  - a. Articles of organization and operating agreement(s), including any amendments;
  - b. Records of all member meetings, including minutes, resolutions adopted or proposed, agendas, and all information used or presented at these meetings;
  - c. Documents sufficient to identify all past and present officers and directors, managing members and managers, and the periods during which each served as such;
  - d. Documents sufficient to identify the names, addresses, telephone numbers, and position of all past and present employees, independent contractors, or other agents; and
  - e. All documents submitted for the purpose of compliance, reporting, or seeking exemptions from registration with any state or federal securities agency.
2. Documents sufficient to identify all services that DBCP offers in connection with a Pension Stream Investment, including, but not limited to the offer, sale, promotion, purchase, or collection on any Pension Stream Investment.
3. All documents evidencing DBCP's due diligence undertakings with respect to any Pension Stream Investment.
4. All documents and communications related to any fee, commission or other compensation paid to DBCP and/or Joseph DeSimone in connection with any Pension Stream Investment.
5. All contracts or agreements, including any related documents and communications, between or among each person or entity involved in the offer, sale, distribution, or promotion of any Pension Stream Investment.

6. To the extent not covered by Item 5 above, all contracts or agreements related to any Pension Stream Investment, including any related documents and communications, to which any of the following persons or entities is a party: ULG, FPD, SMI, PAC, Goldstar, BAIC, Structured Assets, Woodard, or Gamber.
7. All documents and communications related to the solicitation, offer or sale of a Pension Stream Investment to any person or entity, including, but not limited to, any brochures, letters, emails, websites, or other sales materials.
8. Documents sufficient to identify every sale of a Pension Stream Investment, including, without limitation, documents sufficient to identify:
  - a. the buyer and the seller with their respective contact information;
  - b. any agent for the buyer or seller;
  - c. any other persons or entities involved in the transaction;
  - d. documents provided to the buyer or seller before, during, and after the completion of the purchase or sale, including closing books or other similar documents;
  - e. documents sufficient to show the process used to select a Pension Stream Investment;
  - f. all terms of the transaction, including the date of execution, the term in years, the purchase price, a breakdown of any fees included in or additional to the purchase price, and the rate of return and monthly payment to buyer;
  - g. whether the buyer or the seller has entered into any contract or agreement with ULG, FPD, SMI, PAC, Goldstar, BAIC, Structured Assets, Woodard, or Gamber; and
  - h. whether the seller acquired or assigned a life insurance policy to the buyer, and if so, the identity and contact information for the policy issuer.



9. All documents evidencing DBCP's suitability assessment efforts undertaken for each individual and entity that purchased a Pension Stream Investment.
10. Documents sufficient to identify all sellers who have defaulted, in whole or in part, on their respective agreement(s) in connection with a Pension Stream Investment.
11. All communications by DBCP to any actual or potential buyer regarding any potential risk, including, without limitation default by the seller, in purchasing a Pension Stream Investment.

**AFFIDAVIT OF CUSTODIAN OF RECORDS**

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am the duly authorized Custodian of Records of \_\_\_\_\_  
\_\_\_\_\_.
3. I have the authority to certify said records.
4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

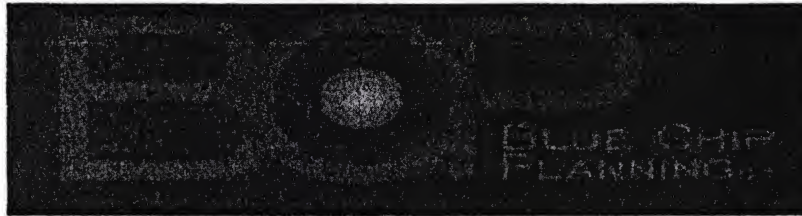
\_\_\_\_\_  
Custodian of Records

SUBSCRIBED and SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_  
\_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

(seal)



Joseph R. DeSimone President LUTCF, FICF

Mailing Address: [REDACTED] AZ [REDACTED]

Email Address: joe@[REDACTED]

Website: <http://www.bluechipplan.com>

Office: [REDACTED]

Cell: [REDACTED]

Fax: [REDACTED]

Re: File 8695

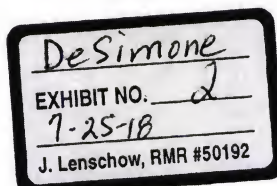
Ms. Toni Brown  
Special Investigator  
Arizona Corporation Commission  
Securities Division  
1300 West Washington, Third floor  
Phoenix, AZ. 85007

June 20, 2017

Dear Investigator Brown:

I entered into an agent's agreement with Financial Product Distributors, LLC. April 4, 2017. **I have never been involved with Andrew Gamber, Sobell Corp, Voyager Financial, or BAIC.** I have absolutely no history with the product your office has called "pension streams" in any capacity with the above person/entities. I certainly do not have any history with "pension streams" until April 2017. I have never used that term in my conversations with any party.

I have viewed the materials, accusations, and mistakes of Andrew Gamber and Voyager Financial with public online resources. The explanation and critique from regulators in those resources do not apply to my work started this April 2017. With the due diligence and structure of the agreement by the **attorneys at Upstate Law Group**, I have been involved with a structure **that does not involve only one party** whose performance is completely relied on. The agreement formulated by the attorneys at Upstate Law Group have positioned this transaction as "**a purchase of a contractual right to a payment obligation and not the payment *per se***" (Disclosure of Risk Statement found in the PRN Kits submitted). Upstate law Group has a multiple party structure including **1) Buyer, 2) Seller, 3) Performance Arbitrage Company** (performs critical evaluation of sellers as well as replacing buyer funds caused by seller non-performance in the future and **4) Upstate Law Group utilizes an IOLTA Account** under



ACC000336 / FILE #8695



the supervision of the **South Carolina Bar Association** with the benefit of a comprehensive **three-way reconciliation** of IOLTA Accounts between attorneys, their clients, and the **Bar Association of South Carolina**. Buyer's income payments only pass through an IOLTA Account of Upstate Law Group. **Contact Information: State Bar of South Carolina, 950 Taylor Street, Columbia SC 29201, P: 803.799.6653.**

Additionally, **Performance Arbitrage's** funds for lack of performance by a seller are **held only in an IOLTA Account of Upstate Law Group**. Performance Arbitrage **never holds** funds that may indemnify buyers in the future. The structure set up by Upstate Law Group includes **multiple protections for buyers and sellers integrated with the secured escrow benefits of having funds held within the strict regulation of the South Carolina Bar Association** under their very own IOLTA Trust Agreement prescribed by state law. **State Bar Associations are very protective** of their IOLTA accounts on behalf of clients as well as their stated philanthropic projects from the interest earned in those accounts each year. The Bar Association has zero tolerance for attorneys who abuse their responsibility regarding IOLTA accounts. Attorneys have been known to have severe sanctions against them imposed for their lack of fiduciary responsibility in the management of their IOLTA accounts. Lastly, Upstate Law Group maintains Lawyer's Professional Liability Insurance as an added protection to clients served by their IOLTA accounts. **Upstate Law Group can be reached at : [REDACTED] SC. [REDACTED]**

In addition to the protections found in the structure of the agreement, the attorneys at Upstate Law Group have made very clear and far-reaching disclosures concerning the risks. Upstate Law Group, additionally will review and reject potential sellers brought to them before the closing of an agreement, as well as before acceptance by Performance Arbitrage Company. This due diligence is so comprehensive that in my experience, life insurance has not been required of a potential seller. Most importantly, it has also been my experience that Upstate Law Group will decline a potential seller due to a problem discovered in its due diligence process and required document requests of the seller. Financial Product Distributors, LLC. has verbally shared with me, that the due diligence process is so comprehensive, that not every person who wants to be a seller is eligible. However, **Financial Product Distributors LLC.** has directed me to **page 8** of their current **Buyer's Guide (refers to the Disclosure of Risk Statement seen in the individual PRN agreements submitted in Exhibit 5 and Exhibit 12)**. The commentary originated from an email dated **June 20, 2017, at 15:16** titled **RE: per your voicemail**. Moreover, it was related to me that Performance Arbitrage's priority and business model is to ideally have strong performance by the seller, in order that the assigned funds in the IOLTA Account, designated to protect buyers, would potentially never be used. This goal would impel superior buyer satisfaction and a solid business operating structure for Performance Arbitrage. **However, within the Risks of Disclosure Statement, the buyer must approve a comprehensive and extensive ledger listing disclosures of known risks**



as well as unknown risks. Lastly, the buyer clearly acknowledges and endorses an underlined disclosure that this is clearly "not a guaranteed product" (Risks of Disclosure Statement found in NPR).

In addition to comprehensive disclosures, is the unique and separate role Performance Arbitrage Corporation has as a standing and readied buyer to those buyers experiencing non performance by their seller. Buyer's future payments are protected by the role of Performance Arbitrage in conjunction with funds held in a segregated IOLTA account of Upstate Law Group. Moreover, the enclosed PRN Documents show that Performance Arbitrage is legally empowered on behalf of buyers by the facts of 1) incentive of liquidated damages in the amount double the amount of outstanding payments (**Contract for Sale of Payments**), and 2) a **UCC 1 lien is imposed** on the asset/collateral to assist Performance Arbitrage (**Security Agreement**). After 3 missed payments by seller, Performance Arbitrage will be ready to have the buyer dispose the asset to their control. In exchange, the buyer never misses one payment, because Performance Arbitrage then directs all payments from the IOLTA Trust Account of Upstate Law Group to the buyer for all payments due and expected. The buyer would simply have to contact: Michelle Plant COO and Vice President, Performance Arbitrage Company Incorporated, [REDACTED] MS [REDACTED], P: [REDACTED], F: [REDACTED]. Also Financial Product Distributors LLC. can assist with buyer service as well at: M. David Woodward, CLU/ Managing Partner, [REDACTED] TX [REDACTED], P: [REDACTED], F: [REDACTED]

The problems of Andrew Gamber and Voyager Financial date back to 2012. I have only been involved with Financial Product Distributors, LLC., for approximately 3 months, and have never recommended any agreement endorsed and practiced by Gamber, Sobell Corp., Voyager Financial or BAIC. I have had wonderful working relationships with clients and citizens of Arizona for over 24 years. Additionally, I have been very active in local charities and have enjoyed supporting local community projects in our home of Arizona for a period extending over 24 years.

**Exhibit 1.** Letter from elder care attorney, Robert Way, dated April 20, 2017, to assist with his client's problem. Mr. Way points out that his client is very unhappy, her financial position is worsening, and there is a concern about the fees paid against the performance of her portfolio for approximately ten years. Robert Way initiated the process by first calling my office with his client in his office. I only decided to assist his client because he affirmed his support and participation in the process. However, Mr. Way warned us that he had dealt with Nova Financial before, and they were incredibly difficult to deal with.

Also attached is website information concerning Robert Way.

**Exhibit 2.** Letter from Nova Financial Chief Compliance Officer Blake Bjordahl dated May 22, 2017, to myself and attorney Robert Way stating they were now ready to assist us. This letter comes **after the complaint** made to your office. Apparently, Mr. Bjordahl, is ignoring Mr. Way's letter with instructions not to contact Ms. Hastings. Throughout the time from Mr. Way's letter to the receipt of Mr. Bjordahl's letter, Nova Financial refused to acknowledge Mr. Way as a legitimate member of the Arizona Bar Association. They refused to acknowledge his letter. They found every excuse not to allow him to represent his client on behalf of her concerns. Even on a conference call with client's broker, Jeff Daniels, and Managing Partner Jake Kagele, it quickly turned into a shouting match and verbal brawl with the client on the phone. Moreover, there was a total disregard for the client's instructions to liquidate the account during that call. **Additionally, there never was any attempt to provide the proper forms to Mr. Way or myself for an orderly direction and execution of the client's desires.**

**Exhibit 3.** IOLTA Account under the **State Bar of South Carolina**. This complaint was generated over an accusation that funds were directed to go to an IOLTA Account in South Carolina. We had no reason to believe that the State Bar of South Carolina had any concern with this account since this account is highly regulated and scrutinized by the State Bar of South Carolina. Moreover, any type of problem or undermining of client funds held in trust would be immediately brought to the attention of all required parties of the State Bar.

**Exhibit 4.** Upstate Law Group, in the State of South Carolina, has the responsibility to scrutinize and perform all final due diligence between a direct buyer and a direct seller. I am strongly relying on the due diligence of the attorneys at Upstate Law Group. It is solely their responsibility delegated by their expert legal training and fiduciary responsibility as an attorney towards their clients.

Also attached is website information concerning Upstate Law Group.

**Exhibit 5.** This contains PRN 1689, PRN 1785, PRN 1702, PRN 1684, PRN 1688 which are called **Fulfillment Kits**. **Fulfillment Kits** are uniquely created for each closing transaction of a direct seller with a direct buyer. The complete information of the seller, as well as the necessary information of the buyer, are both plainly disclosed. All disclosures of risk are plainly enumerated and explained in detail. Additionally the extensive documentation by the seller, during the due diligence process, is described in detail. **Upstate Law Group's IOLTA Account** is utilized as an escrow account between buyer and seller. The **IOLTA Account** is also used to hold funds if **Performance Arbitrage**, as a ready and standing buyer, is needed to fulfill an unique agreement with a buyer experiencing nonperformance by a seller ( **See PAC documents in each PRN Exhibit 5**) **Performance Arbitrage** does not hold funds for future situations of nonperformance like State Farm Insurance would. It is not a Guarantee Association or Insurance Company([mypaconline.com](http://mypaconline.com)). Therefore, the IOLTA Account is used to



protect all parties involved in this direct transaction. The enclosed PRN Closing Documents clearly set forth the layers of buyer protection by the disclosed and separate participating parties, involved in this structured legal agreement. The authors of these documents clearly demonstrate and categorize the purpose and design of this asset's structure. Moreover, the originators of this document, placed many legal safeguards to prevent undesirable power to be obtained and exerted by any one party, either directly or indirectly,

**Exhibit 5(a).** Proof of separate payments from one unique seller to one unique buyer. The Moreno Legacy Trust utilized five unique sellers in order to fulfill its needed income goal. Therefore, five separate payments were made for the month of May 2017. Moreover, payments are never grouped together or pooled in any way. Each fulfillment completes the transaction between only one seller to one buyer. There can never be a commingling of funds. This also demonstrates the fidelity to the rules and laws of an attorney's IOLTA account. Blank copies of essential forms contained in each PRN also attached for your convenience.

**Exhibit 6.** It shows the breakdown and source of each PRN Fulfillment Kit mentioned in Exhibit 5.

**Exhibit 7.** This is the Buyer's Agent Agreement. DeSimone Blue Chip Planning, LLC, has no down line structure of agents within this process. I have never been contracted with Andrew Gamber, Voyager Financial, Sobell Corp., or BAIC. Moreover, I have never received any possible compensation from either of the above parties. It would be a chronological impossibility.

**Exhibit 8.** This is the Structured Assets Buyer's Guide. It is issued on request. DeSimone Blue Chip Planning has never done business with GoldStar Trust Company. I have no reason to believe that I have ever been involved in any national or regional marketing promotion of this program by television, radio, internet, or seminar.

**Exhibit 9.** The enclosed shows DeSimone Blue Chip Planning's status with the Arizona Corporation Commission, articles of incorporation/amendments, operating agreement, shareholders. DeSimone Blue Chip Planning started in the field of life insurance approximately 24 years ago and has been in good standing with the State of Arizona during those years.

**Exhibit 10.** PRN 1809

**Exhibit 11.** PRN 1839.

**Exhibit 12.** PRN 1844.

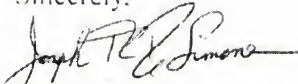


**Exhibit 13.** Acknowledgment/Authorization/Notice of Right of Review Period and Rescission/Contract Ratification.

**Exhibit 14.** Emails

To conclude, I relied on attorney Robert Way's direction and commitment to his client. He engaged me to assist. Otherwise, I never would have been involved with his client. I worked directly with him, and I moved forward each step in conjunction with his knowledge, as well as the approval of his client. Upstate Law has provided the structure and due diligence in the understanding of the relationship and duties between buyer and seller. They have built their agreement under a specific legal structure utilizing an IOLTA account based on the laws and ethical model of the State Bar Association of South Carolina. **From the time I have been contracted with Financial Product Distributors, LLC., no client complaints nor seller defaults have been reported among the 4 buyers I have represented.** This complaint is from a brokerage firm acting out of a conflict of interest, in order to protect its business, and to avoid the responsibility of a serious complaint from a client that they were not handling well for nearly a decade.

Sincerely,



Joseph R. DeSimone  
President

Appendix/Disclosures File No. 8695

**B) Documents and Information to be Produced**

1.

(a) Exhibit 9

(b) Not Applicable for LLC.

(c) Exhibit 9

(d) See Transmittal Letter. We have never had employees. We do not have documents available to properly satisfy this question. However, my mother, Camille DeSimone, who is a retired legal secretary of the City of Tucson Attorney's Office and the Marana Town Attorney's Office under Frank Cassidy, has helped me the last approximately 3 years as an nonsalaried office assistant. She has been at that duty during the **three months of our work in 2017 with structured assets.**

(e) Not applicable, DeSimone Blue Chip Planning has never constructed or created this agreement. Please refer to Upstate Law Group and Performance Arbitrage Company.

2. Only in the capacity of client sales. We are not producers of structured assets agreements.

3. Exhibits 5, 5(a), 10, 11, 12. I had extensive conversations with David Woodward before and after contracting. I also had separate contacts before and after contracting with Jeff Ahern of Secured Positions and his partner, Jim Hienemann, via phone on several occasions. Jeff Ahern's Contact Information: [REDACTED] Ohio [REDACTED] Phone: [REDACTED]. Jim Hienemann's Phone: [REDACTED]

4. Exhibits 7, 14 (emails with David Woodward). Jeff Ahern of Secured Positions received a small referral fee and shared one time the amount of \$750 with me in May, 2017. Communication was by phone.

5. Exhibits 7, 14 (emails with David Woodward). Additionally, discussed sales ideas for potential clients with Jeff Ahern of Secured Positions via phone.

6. Exhibits 7, 14 (emails with David Woodward), and transmittal letter

7. Exhibits 8, 14 (Illustrations and calculations from David Woodward)

8.

(a) Exhibits 5, 5(a), 10, 11, 12

(b) Exhibits 5, 5(a), 10, 11, 12

(c) Exhibits 5, 5(a), 10, 11, 12

(d) Exhibits 5, 5(a), 10, 11, 12, 13

(e) Exhibits 5, 5(a), 10, 11, 12, 13

- (f) Exhibits 5, 5(a), 10, 11, 12, 13
- (g) Exhibits 5, 5(a), 10, 11, 12, 13
- (h) Transmittal letter Page 2
- 9. Exhibits 5, 5(a), 10, 11, 12, 13
- 10. Transmittal Letter (last paragraph)
- 11. Exhibits 5, 5(a), 8, 10, 11, 12, 13, transmittal letter

**Disclosure** - All documents and my signature on the *affidavit of records* are based on the best of my ability. All statements and documents are made in **good faith**. However, in today's excessive conversational use of emails, some may have not been saved. The scope and breath of the subpoena are so vast, that it is very challenging to account for so many possible events in the past.

**Email Disclosure #1** I know that there was an email between approximately April 20, 2017 and May 20, 2017 that I cannot find. It regarded attorney Robert Way's efforts to bring to my attention a posting on the SEC website about Upstate Law Group and Performance Arbitrage. I had shared with Robert the background of prior inquiries by regulators in Texas regarding those entities from what was relayed to me by David Woodward of Financial Product Distributors, LLC.

**Email Disclosure #2** I have elected not to send the document titled Structured Assets-Updated Marketing Materials from [dwoodward@financialproductdistributors.com](mailto:dwoodward@financialproductdistributors.com) dated January 11, 2016, at 13:21. It contains advertising materials that I have no reason to believe I asked for. Moreover, I have no reason to believe I used it with clients. To the best of my knowledge and ability, I do not believe I ever had a reason to use their Structured Assets Presentation. I have already submitted the Structured Assets Buyer's Guide in a prior exhibit.

**Email Disclosure #3** I have elected not to submit an email titled Re: Structured Assets from [dwoodward@financialproductdistributors.com](mailto:dwoodward@financialproductdistributors.com) addressed to a potential buyer with an engineering background. It discusses the intricacies of financial software that I was not comfortable explaining. This financial software is found on [www.timevalue.com](http://www.timevalue.com). The email is dated May 17, 2017 at 02:58. He did not proceed further with structured assets.

**Email Disclosure #4** I have elected not to submit an email document titled Sales Idea: 5-year laddering strategy with Structured Assets. The email is sent from [info@structured-assets.com](mailto:info@structured-assets.com) on April 26, 2016, at 17:12. I never asked for this idea. I never entertained this idea either for myself or clients. As far as I know, this idea was ultimately canceled by the author. Moreover, I did not quite understand it, and to the best of my recollection, never used it with a single person. It contained several illustrations and charts which I found irrelevant to our work with clients, and I saw no reason to ever use them.

**Email Disclosure #5** I have elected not to send an email I received from Attorney Alan Baskin which was then forwarded to [dwoodward@financialproductdistributors.com](mailto:dwoodward@financialproductdistributors.com).



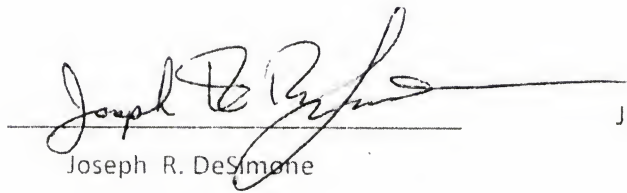
The title of the email is FWD/ACC/Privileged Communication. At the time I was deciding whether engaging Attorney Alan Baskin would be beneficial. Alan had asked me to obtain some initial information as we discussed the possibilities of working together.

Software Disclosure

I have an Microsoft Excel worksheet called "Structured Assets Contracted Payments Scheduled Calculator" by Vertex42.com.

I also have a program called "Microsoft Excel 97-2003 Worksheet".

To the best of my ability and recollection I don't recall having much use for these items. In practice I would obtain illustrations from Financial Product Distributors, LLC.



Joseph R. DeSimone

June 20, 2017

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF ARIZONA )  
County of PIMA ) ss.  
 )

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am the duly authorized Custodian of Records of DE SIMONE  
BLUE CHIP PLANNING LLC
3. I have the authority to certify said records.
4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

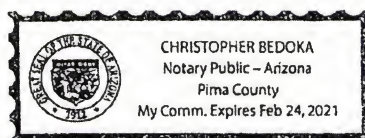
Joseph De Simone  
Custodian of Records - JOSEPH DE SIMONE

SUBSCRIBED and SWORN to before me this 19<sup>TH</sup> day of JUNE, 2017, by  
JOSEPH DESIMONE

My Commission Expires:  
FEB. 24. 2021

Christopher Bedoka  
NOTARY PUBLIC

(seal)



ACC000345 / FILE #8695



Name: TONI BROWN

Sender: JOSEPH DESIMONE

7/6/2017 11:29

123013TT4275538352

ed

7/6/2017

Arizona Corp Commission  
Securities Division

07620112935

JOSEPH DESIMONE  
(520) 789-7392  
THE UPS STORE #6799  
STE 110  
AZ

18 LBS  
SHP WT: 18 LBS  
DATE: 03 JUL 2017

OF 1

SHIP MS. TONI BROWN/ SECURITIES DIVISION  
TO: ARIZONA CORPORATION COMMISSION  
FL 3  
1300 W WASHINGTON ST  
Phoenix, AZ 85007-2951

PHOENIX AZ 85007-2951

AZ 850 9-20

UPS GROUND

TRACKING #: 1Z 301 3TT 42 7553 8352

BILLING: P/P  
SIGNATURE REQUIRED

Received

JUL 06 2017

REF #1: 7/3/2017 CB  
REF #2: 6799

Arizona Corp Commission  
Securities Division

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P.GOLD  
0402-2248  
S. ORANGE  
FL 3  
1300 W WASHINGTON ST  
PHOENIX AZ 85007-2951

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Exhibit 7

# Financial Product Distributors, LLC

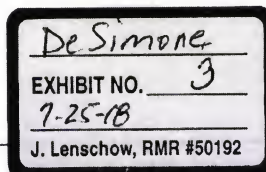
## BUYER'S AGENT AGREEMENT

This Agreement is between De Simone Blue Chip Financing LLC ("Buyer's Agent") and Financial Product Distributors, LLC ("FPD"). FPD is a third party marketing firm that specializes in facilitating the purchase of Structured Assets through distribution agreements with multiple factoring companies; and requires a written Agreement with the Buyer's Agent. All transactions must be facilitated through FPD in order for Buyer's Agent to be paid according to the terms of this Agreement. For the purposes of this Agreement Buyer's Agent is defined as the individual, legal entity, any associated legal entity or D/B/A, its employees, and/or its independent contractor relationships; and FPD is defined as the legal entity, any associated legal entity or D/B/A, its employees and/or independent contractor relationships, and the factoring companies with which it maintains distribution agreements.

Henceforth as of date of signing both parties by mutual covenants hereby agree and understand the following:

Whereby it is agreed that upon the acceptance of this Agreement, the entity will become a Buyer's Agent for FPD, and will be eligible to participate in the sales and distribution of FPD's Structured Assets.

1. **Independent Contractor:** The Buyer's Agent understands that it will maintain an independent contractor relationship with FPD, and nothing in this Agreement implies that the Buyer's Agent is an agent, employee, or franchisee of FPD. Furthermore, the Buyer's Agent will not be treated as an employee for any purpose; including but not limited to that of the Federal Unemployment Tax Act, Federal Insurance Contribution Act, the Social Security Act and State Unemployment Act. FPD will not maintain Workers Compensation or disability coverage for the Buyer's Agent. Buyer's Agent understands and agrees that s/he will pay all applicable Federal and State income taxes, self-employment taxes, local taxes and/or license fees which may be due because of the direct activities pursuant to this Agreement.
2. **Other Agreements:** The Buyer's Agent understands that this Agreement supersedes any and all other Agreements between the parties, and is the entire Agreement between FPD and the Buyer's Agent. No other additional promises, representations, guarantees or agreements of any kind shall be valid unless in writing and signed by both parties.
3. **Governing Law:** The validity, construction and performance of this Agreement will be governed by the laws of South Carolina, excluding that body of law pertaining to conflicts of law. If any part of this Agreement is deemed unenforceable in a court of competent jurisdiction, then the remaining Agreement will remain in full effect.



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4. **Arbitration:** If a dispute should arise regarding the provisions as laid out herein, both FPD and the Buyer's Agent agree to resolve the matter privately. In the event a dispute cannot be resolved, it is hereby agreed that the dispute shall be referred to an arbitrator in the State of South Carolina for arbitration in accordance with the applicable *United States Arbitration and Mediation Rules of Arbitration*. The arbitrator's decision will be final and legally binding, and judgment may be entered thereon. Each party will be responsible for its share of the arbitration fees in accordance with the applicable Rules of Arbitration. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award; the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration, or defend or enforce the award.
5. **Non-Solicitation:** Neither party to this Agreement shall purposely, intentionally, or maliciously solicit any agreements to any organization, agent, agency, marketer, employee, partner, owner, or independent contractor that is associated with, contracted with, or affiliated with the opposite party in any form during the term of this agreement and for thirty-six (36) months thereafter.
6. **Unauthorized Use:** The Buyer's Agent agrees not to use the website, logos, trademarks, trade names, literature or any other materials of FPD in any type of advertising without the prior written approval of FPD.
7. **Compensation:** The Buyer's Agent understands that completed sales are a requirement to earn compensation. Compensation is based on the Buyer's purchase price of the Structured Asset and will be paid by Upstate Law Group, LLC, the designated Servicing/Escrow Company, upon Buyer review and written final approval for each Structured Asset purchase to close. The Buyer's Agent is not guaranteed any income, profit or success. Compensation will be considered due and payable upon the effective closing of the Structured Asset case, and will be deemed payable to the Buyer's Agent even if this Agreement is not in force at the time of closing. However, this Agreement must be in force at the time of submission of new business. Since the nature of this transaction is **TIME SENSITIVE**, the Buyer's Agent hereby warrants and accepts the responsibility to take reasonable care in not only disseminating documentation to and from the Buyer, but also in maintaining active communication with FPD on all outstanding requirements.

**Compensation is as illustrated below:**  
**Federal Government / PBGC-backed corporate pensions**

| TERM PERIOD | COMPENSATION |
|-------------|--------------|
| 5 YEAR      | 6%           |
| 6 YEAR      | 6%           |
| 7 YEAR      | 6.5%         |
| 8 YEAR      | 6.5%         |
| 9 YEAR      | 6.5%         |
| 10 YEAR     | 7%           |

8. **Indemnification:** The Buyer's Agent agrees to indefinitely indemnify and hold harmless FPD and all its agents, employees, members, managers, and independent contractors from any claims, damages, and expenses that may arise within the performance of this Agreement, including attorney's fees, arising out of the Buyer's Agent's actions or conduct in violation of this Agreement.



9. Accuracy of Information: The Buyer's Agent shall make no false or misleading statements concerning FPD, its employees, members, managers, or its processes. If it is found that the Buyer's Agent has been negligent in providing information about FPD or any product it offers to anyone, then FPD will investigate internally to determine the best course of action. FPD will provide the Buyer's Agent a written statement of its findings within ten (10) days of said such violation, and the steps it is prepared to take to correct the misrepresentation. Violations of this provision may include but not be limited to legal prosecution, and will be grounds for immediate termination of this Agreement. FPD will then have within its right the ability to retroactively rescind this Agreement back to the inception date.
10. Regulatory Agencies: No regulatory agency by any state or federal authority has endorsed or approved this Agreement, and FPD makes no such claim to Buyer's Agent.
11. Agreement Modifications: This Agreement may be modified from time to time to meet legal requirements and changes in economic conditions. FPD agrees to give thirty (30) days' notice of such modification.
12. Expenses: The Sale Representative shall be responsible for all expenses incurred by her/him in performance of their duties pursuant to this Agreement, unless otherwise set forth in writing between the parties prior to the expense.
13. Duration of Agreement: This Agreement will continue until terminated by either party upon thirty (30) days written notice to the other. FPD may terminate this Agreement for cause upon twenty-four (24) hour written notice to Buyer's Agent. For cause shall be defined as the Buyer's Agent acting in a manner which may cause damage to the business reputation of FPD, or in a manner which is in violation of local, state or federal laws or regulations, or for violating any provision of this Agreement.
14. Warranty against prior existing restrictions: The Buyer's Agent represents and warrants to FPD that s/he is not a party to any Agreement containing a non-competition clause or other restriction with respect to:
  - a. The services which s/he is required to perform hereunder; or
  - b. The use or disclosure of any information directly or indirectly relating to FPD's business, or the services s/he is required to render pursuant hereto.
15. Assignability: The Buyer's Agent agrees, for her/himself and on behalf of her/his successors, heirs, executors, administrators, and any person or persons claiming under her/him of virtue hereof, that this Agreement and the rights, interests, and benefits hereunder cannot be assigned, transferred, or any such similar process. Any attempt to do so, contrary to the terms hereof, shall be null and void and shall relieve FPD of any and all obligations or liability hereunder.
16. Severability: If any provision, paragraph, or subparagraph of this Agreement is adjudged by any court of competent jurisdiction to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Agreement.
17. Termination: Upon the expiration of this Agreement for any reason, whether with or without cause, the Buyer's Agent will be entitled to compensation payable on those transactions already submitted to FPD prior to the expiration date thereof. Upon the termination of this Agreement for any reason other than for cause the terms of Section Six (6) will continue to apply.
18. Binding-effect: This Agreement shall be binding upon, and inure to the benefit of, FPD and FPD's successors, assignees, heirs, legal representatives, executors, and administrators. FPD reserves all rights not expressly granted herein.



19. Readings: The headings in this Agreement are inserted for convenience only and will not be considered in interpreting the provisions hereof.
20. Written Notice: For purposes of this Agreement, written notice may consist of U.S. mail (return receipt), UPS letter (with tracking number), fax or email (with delivery receipt). Both parties agree to keep each other apprised of any change in address.
21. Counterparts: This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together will constitute one (1) and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of date of signing.

Financial Product Distributors, LLC

Print Name: M. David Woodard  
Signature: M. David Woodard, CLU  
Title: Managing Partner  
Date: 4/3/2017  
Address: [REDACTED]  
[REDACTED]  
[REDACTED] TX [REDACTED]

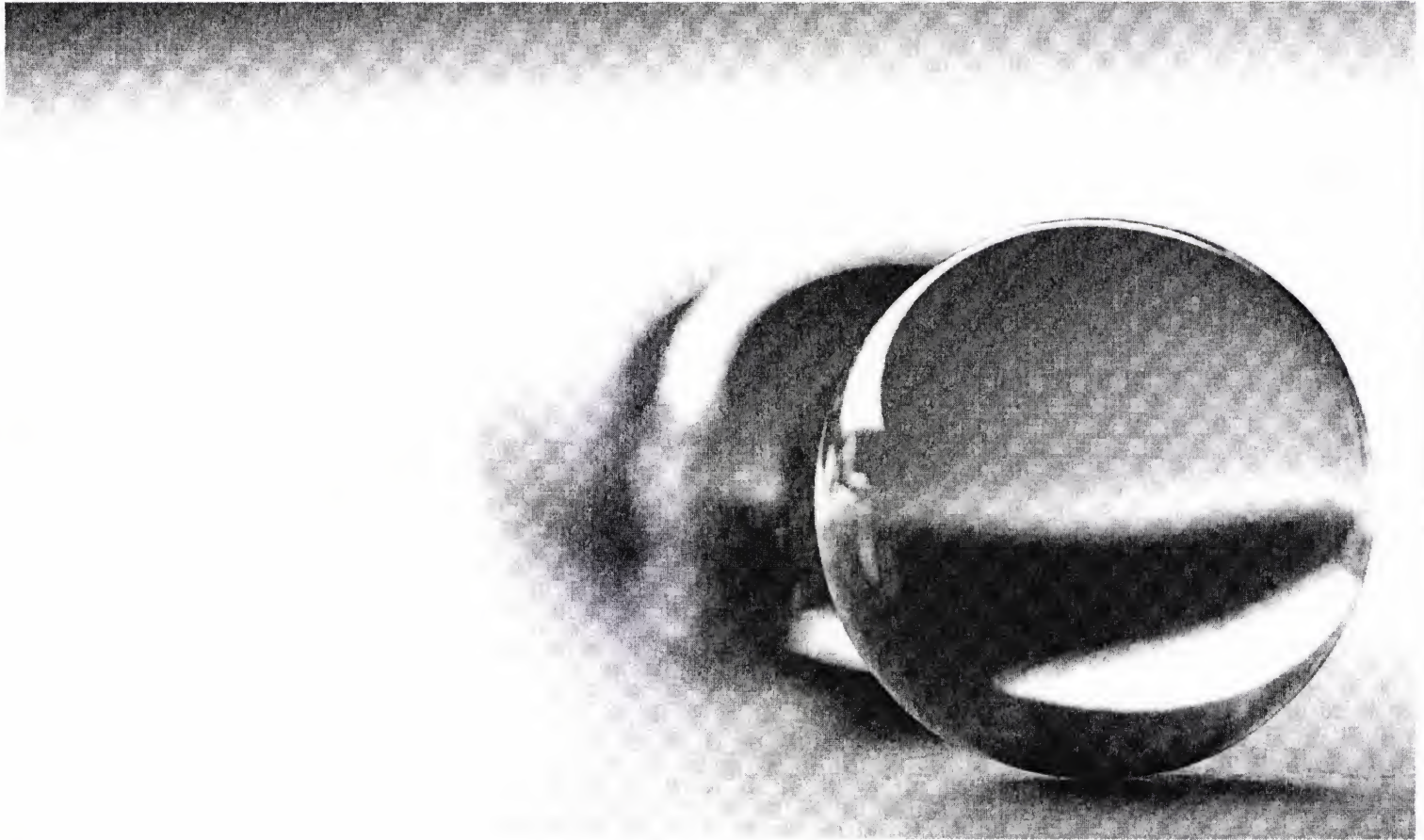
De Simone Blue chip Planning, LLC

Buyer's Agent

Print Name: Joseph R. De Simone  
Signature: Joseph R. De Simone  
Capacity: President/Treasurer  
Date: April 4, 2017  
Address: [REDACTED]  
[REDACTED] Arizona [REDACTED]  
[REDACTED]  
Joe @ [REDACTED]

# Structured Assets

Buyer's Guide



|                         |          |
|-------------------------|----------|
| <i>DeSimone</i>         |          |
| EXHIBIT NO.             | <i>4</i> |
| <i>7-25-18</i>          |          |
| J. Lenschow, RMR #50192 |          |

# What to Expect

Congratulations! You're working with an advisor who has been approved to work with Financial Product Distributors, LLC ("FPD") to offer our exclusive Structured Assets, and has made this Guide available to you as you are considering purchasing a structured asset.

FPD and our partners in the Structured Assets business have revolutionized the purchase process of these assets. It's important to understand how our unique process protects you, and offers superior confidence in the transaction.

This Guide outlines key elements of our purchase process, and provides detailed information to answer most questions.

If at any time you or your advisor have questions, do not hesitate to reach out to us by phone or email. FPD does not sell directly but we are always available to our advisors and their clients throughout the purchase process.

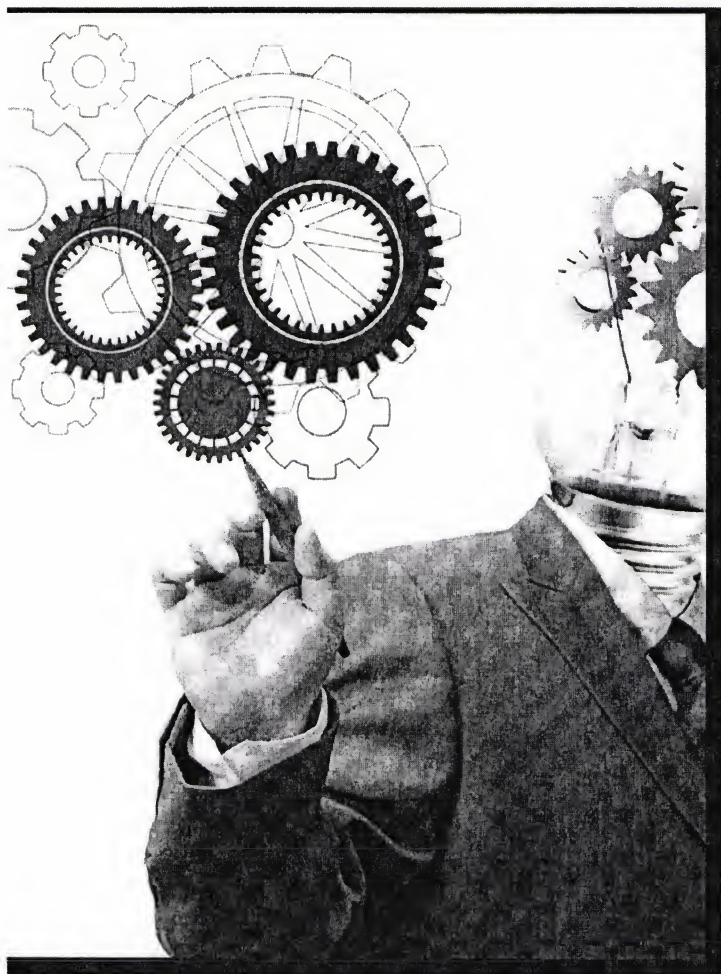
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### What are Structured Assets?

A structured asset represents payments from a qualifying pension plan made available for sale by the original owner in exchange for a lump sum cash payment calculated as a discount to its present value; typically to cover an unexpected life event or finance a new life opportunity. When the original owner of such payments sells their future payments for cash today a secondary market is created, meaning it is simply an existing series of payments being sold in the secondary market.



Representative pension plans include those from branches of the U.S. military, veterans benefits, and/or certain corporations. These assets pay the Buyer a fixed payment amount, for a fixed period of time, resulting in a fixed annual effective rate of return. These payment amounts and corresponding rates of return, while they do come with different risks, are typically greater than those available through traditional fixed income products.

### Origin of the Market

The secondary market for a variety of discounted, or factored, payments has existed for over thirty years, and represents a multi-billion dollar a year industry. Examples include payments derived from pension plans, structured settlements, annuities, lottery winnings, oil and gas royalties, corporate accounts receivable, and inheritances. Historically such transactions have only been available to banks, hedge funds, foundations, endowments, and other institutions who realize that by buying such payments at a discount to their present value they can achieve returns typically higher than alternate fixed income products. Today, however, due to innovations in risk management and price leveraging the market to purchase such payments has expanded to now include individual "retail" buyers.



#### Transaction Assistance Team

FPD serves as a Distributor for various factoring companies that specialize in facilitating the purchase of Payments derived from certain Structured Assets. These factoring companies identify those individuals interested in selling a portion of their payments through websites such as [www.buyyourpension.com](http://www.buyyourpension.com), [www.cashnowforyourpension.com](http://www.cashnowforyourpension.com), and [www.bradling.com](http://www.bradling.com), along with others. FPD, along with these factoring companies and other business partners, has decades of experience in the financial services industry and have been involved with Structured Assets since 2009. Since that time these entities have collectively facilitated the purchase of in excess of 1,100 cases representing over \$61,000,000 in aggregate purchase price. Our process delivers quick closings by only marketing assets that are in stock and approved for sale, flexible terms by allowing the Buyer to dictate the purchase price and/or payment amount along with term of payments, and competitive effective rates of return. To further protect Buyers, we engage independent counsel through Upstate Law Group, LLC ("ULG") to review all of the supporting documentation in the Closing Book to ensure the due diligence process is completed as set out in the Buyer's Purchase Assistance Agreement. Additionally, the utilization of ULG for closing the transactions and servicing the ongoing payments ensures a Buyer's funds are always in the hands of an insured escrow agent.

#### Purchase Prices and Terms

Purchase prices start at \$35,000 and can go as high as \$1,000,000 or more. Buyers can select the purchase price and payment term based on their specific needs. Payment terms are available in one-year increments starting with five-year terms and going up to ten-year terms, with all payments made to the buyer monthly. The interest rate is represented as an annual effective rate of return compounded monthly, and is recorded to an accuracy of three decimal places. Currently the available payment terms and corresponding effective rates of return are as follows:

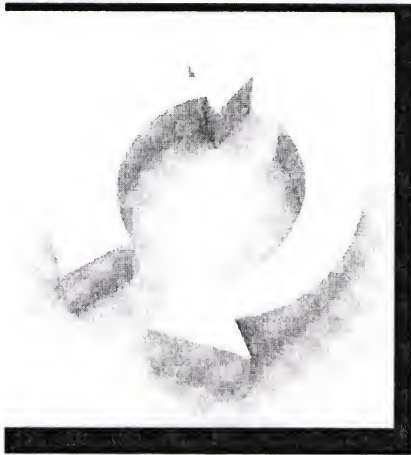
| Term in Years | Effective Annual Rate of Return |
|---------------|---------------------------------|
| 5,6           | 7.000%                          |
| 7,8,9         | 7.500%                          |
| 10            | 8.000%                          |

*\* For purchases of \$500,000 or more from a single Buyer add .50% to effective annual rate of return, AND for purchases of \$1,000,000 or more from a single Buyer add 1% to effective annual rate of return*



### Sample Payment Terms

| Term in Years | Effective Annual Rate of Return | Purchase Price | Monthly Payment | Aggregate Payments Received |
|---------------|---------------------------------|----------------|-----------------|-----------------------------|
| 5             | 7.000%                          | \$100,000      | \$1,969.99      | \$118,199.40                |
| 6             | 7.000%                          | \$100,000      | \$1,694.59      | \$122,010.48                |
| 7             | 7.500%                          | \$100,000      | \$1,521.71      | \$127,823.64                |
| 8             | 7.500%                          | \$100,000      | \$1,376.04      | \$132,099.84                |
| 9             | 7.500%                          | \$100,000      | \$1,263.53      | \$136,461.24                |
| 10            | 8.000%                          | \$100,000      | \$1,198.58      | \$143,829.60                |



### Legal Structure of the Transaction

The Seller of the structured asset, through a signed agreement, grants the factoring company as their Seller's Agent the authority to sell the payments on their behalf for a pre-negotiated purchase price. Once a Buyer has been found, the original payment recipient, or Seller, is selling a fixed payment arising from a certain structured asset to the Buyer for the designated payment term. This is accomplished through a Contract for Sale of Payments document executed by both Seller and Buyer.

Prior to closing Seller must execute and send verification that directs the pension plan to now divert the payment to ULG as the designated escrow agent, who in turn sends a new distribution to Buyer via ACH transfer for each payment period of the designated term.

### Process to Purchase

Once a Buyer has been identified who would benefit from owning a structured asset, the process to purchase is as follows:

- Step 1**
  - Buyer signs and returns paperwork indicating desired purchase price, term, and titling for the purchase. Buyer places purchase funds into escrow with ULG, to be held pending Buyer's final approval of transaction upon receipt and review of closing documents.
- Step 2**
  - In approximately two to four weeks the assigned factoring company will identify from its approved inventory the appropriate seller(s) with payments meeting the Buyer's desired terms. Seller will sign and return to the factoring company all case specific paperwork.
- Step 3**
  - Case(s) specific Buyer paperwork, closing documents, and Buyer Receipt are sent for Buyer to review and sign signifying approval of transaction to proceed with closing.
- Step 4**
  - Once Buyer approves transaction Seller's proceeds are sent to their bank account, payment has been diverted to ULG as designated servicing company, and ULG sends a new distribution to Buyer via ACH transfer for each payment period of the designated term.



### Documents Received by Buyer at Closing

After ULG has completed its review of the case, a Closing Book will be sent electronically to your adviser. You will be required to either approve or dis-approve the transaction for closing within three days of receipt of this Closing Book.

1. Summary Cover Page
2. ULG Review Letter
3. Sales Assistance Agreement
  - Seller's Agreement allowing the factoring company to find a Buyer for their payments
4. Photo Identification of Seller
5. Seller's Credit Report
6. Pension Benefits Letter
  - From pension obligor attesting that Seller is entitled to the payments
7. Purchase Application
  - Buyer's Application for the specific asset being purchased
8. Dually executed Contract for Sale of Payments
  - Legal contract between Buyer and Seller dictating the terms of the transaction
9. Seller's Security Agreement
  - Allows ULG to file a UCC-1 lien against the asset on Buyer's behalf
10. Seller's Limited Durable Power of Attorney
  - Grants the factoring company authority to execute the Contract for Sale of Payments
11. Seller's Affidavit of Marital Status, and if married a Spousal Consent Form
12. Buyer's Purchase Assistance Agreement
  - Outlines the roles and responsibilities of the Transaction Assistance Team
13. Buyer's Risk Disclosure
  - Outlines the risks and risk management techniques utilized in the transaction
14. Buyer's Escrow Services and Fee Agreement
  - ULG servicing agreement
15. Amortization Schedule depicting payments sold to Buyer
16. Seller's Payment Change Verification
  - Notarized evidence the payments have been diverted to ULG as the escrow agent
17. PAC Option to Purchase Defaulted Structured Asset Agreement
  - Buyer's protection against risks involved in the transaction

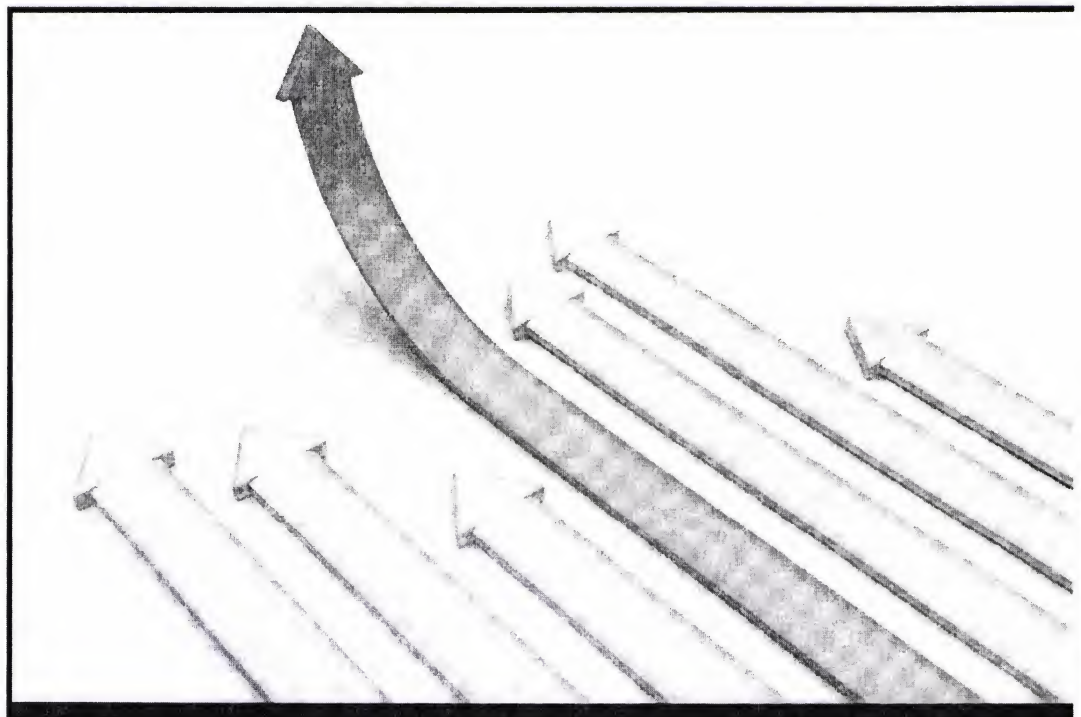
### Payment Servicing

Payment servicing is commonly used to facilitate payment transfers in banking, securities, mortgages, property management, and IRA administration. Many transactions in the financial industry involve a form of payment servicing.

The use of a servicing agent for structured asset transactions offers the buyer several benefits, including purchaser anonymity, ease of account servicing, and simplified estate administration for the heirs of a Buyer.

We are proud to have a contractual relationship with Upstate Law Group, LLC to perform escrow, servicing, and account management for buyers of Structured Assets. This ensures you have a real person to work with when you have a change in circumstances, such as bank account or address. There are no additional fees for standard payment servicing as the costs for ULG's services are built into your purchase price, and an executed copy of your Escrow Services and Fee Agreement can be found in the closing documents.

ULG is based in Easley, SC and has been servicing Payments derived from Structured Assets since 2012. Funds escrowed with ULG are held in an IOLTA account (Interest on Lawyers Trust Account) therefore legally segregated from the firm's operating account; and for further protection ULG maintains Lawyers' Professional Liability insurance. More information about the firm can be found at [www.upstatelawgroup.com](http://www.upstatelawgroup.com).



# Risk Factors

The primary risks associated with the purchase of a structured asset are the risks that a Seller will breach their contractual obligation and not honor the agreement to direct the payment to ULG as the escrow agent, or that the structured asset defaults due to the Seller permanently no longer being qualified to receive the payment.

To mitigate these risks we have partnered with Performance Arbitrage Company, Inc. ("PAC"), headquartered in Flowood, MS. PAC's ownership and management have careers spanning several decades in the financial services industry, including relevant experience as a commercial mortgage lender and banker, financial and estate planner of creditor protected trusts, and co-owner/developer of several commercial real estate projects; and have been active in the structured asset space since 2012. PAC performs two vital roles in the transaction:

1. In-depth telephone interviews and document review to ensure sellers meet established requirements relating to residence and employment stability, household income and expense ratios post-sale, reason for entering into transaction, and other criteria established to ensure only those sellers most able to maintain their financial commitment after receiving and spending the lump sum cash payment are approved.
2. Issuing an Option to Purchase Defaulted Structured Asset Agreement (OPDSAA)\*, sent with the closing documents, the cost of which is built into Buyer's purchase price and is modeled using a proprietary algorithm based on in-depth analysis of previously closed structured asset transactions. If a purchased structured asset misses a payment, for any reason, PAC will make payments for the original contractual amount for up to three payments while attempting to correct the default. If default has not been corrected after three missed payments, or upon PAC's request prior to three missed payments, Buyer can exercise their option to sell the defaulted structured asset to PAC under the OPDSAA. This purchase will be in the form of a Corporate Promissory Note that is guaranteed by PAC and pays the original contractual payment amount over the remaining contractual term, according to the Contract for Sale of Payments. PAC also reserves the right to purchase a replacement contract to fulfill the terms of the Corporate Promissory Note. Funds paid to PAC for the OPDSAA classified as "reserves" are held in a separate IOLTA account with ULG, to ensure usage will only be for payments made on those cases in default.

*\* The OPDSAA is an agreement with a privately owned corporation to support the purchase of a structured asset in the event of a default of the purchased asset, and it is NOT an insurance or guaranty product.*



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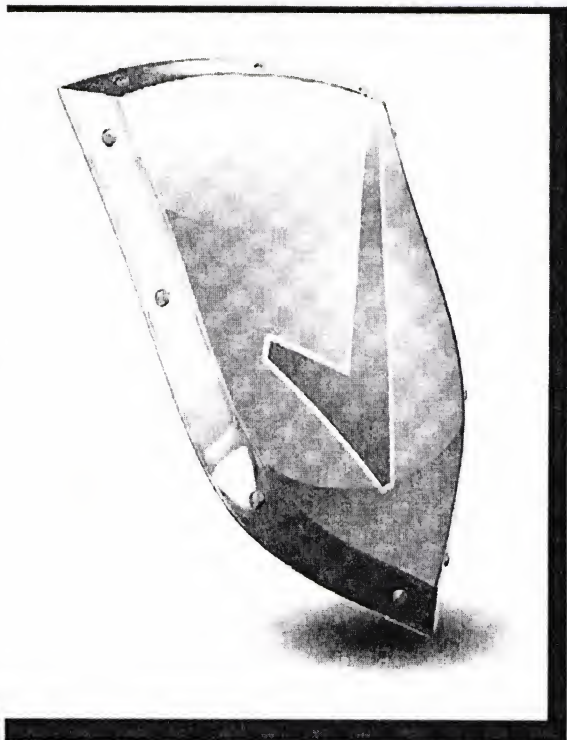
### Purchase Fees and Expenses

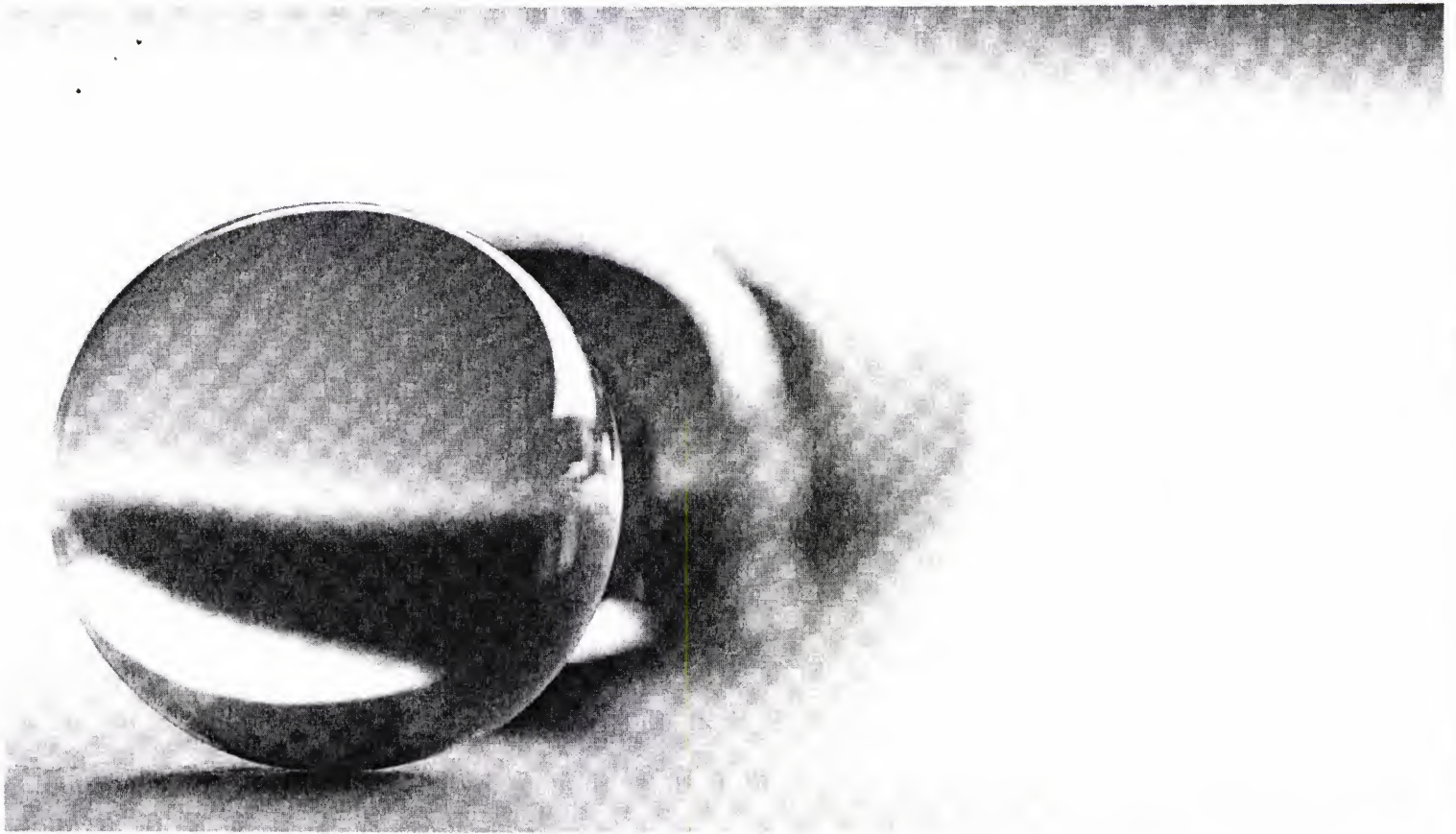
The Buyer is not charged any additional fees or expenses when acquiring a structured asset. The price and the corresponding annual effective rate of return constitute the net price and the actual effective rate of return Buyer will earn. All associated underwriting, legal, escrow, closing fees, and commissions; along with the PAC Option to Purchase Defaulted Structured Asset Agreement are paid out of the net difference between the price at which the factoring company enters into a Sales Assistance Agreement with a Seller, and the price at which the structured asset is sold to a Buyer.

### IRA, ROTH, and Qualified Funds

Structured Assets can be purchased and held within a custodial IRA account. Such purchases may incur separate fees assessed by the custodian. If the structured asset is being held inside of a custodial IRA the custodial IRA must be established prior to purchase to ensure proper titling. A separate Investment Direction or similar form from the IRA custodian is required for these purchases, and payments sent from ULG as the servicing agent will be made to the IRA custodian for deposit into the IRA account. The Buyer can then elect to receive distributions from the IRA account directly from the IRA custodian, if they so choose.

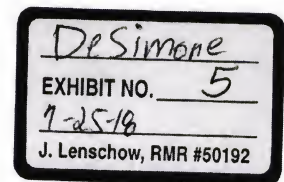
We maintain a relationship with GoldStar Trust Company, LLC, who serves as our preferred IRA custodian. More information about establishing an IRA, fee schedules, and GoldStar itself can be found at [www.goldstartrust.com](http://www.goldstartrust.com).





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[www.structured-assets.com](http://www.structured-assets.com) | [info@structured-assets.com](mailto:info@structured-assets.com)





## Sales Assistance Agreement

(For Assistance in the Sale of Post Distribution Payments Derived from a Structured Asset)

This Sales Assistance Agreement (hereinafter referred to as the ("Sales Assistance Agreement")) is made effective this 24 day of April, 2017 ("Effective Date"), by and between Daniel H. Prigge ("Seller") and Mark Corbett.

### RECITALS

WHEREAS, Seller desires to sell certain fixed Payments arising from a certain Structured Asset that have been distributed to and received by Seller ("Payments") as described in this Sales Assistance Agreement;

WHEREAS, Seller desires to engage Mark Corbett to provide Seller with administrative assistance in connection with the sale of the Payments; and,

WHEREAS, Mark Corbett desires to accept such engagement subject to the terms and conditions contained in this Sales Assistance Agreement.

NOW THEREFORE, in consideration of the mutual covenants and benefits herein contained, the receipt and sufficiency is hereby acknowledged, Seller and Mark Corbett agree as follows;

1. Seller appoints Mark Corbett as Seller's Agent for the express, limited, purpose of submitting a contingent offer for sale of the Payments ("Offer of Sale"), on Seller's behalf and under specified terms approved by the Seller, to one or more third party potential Buyer(s), the identities of which are to be provided to Mark Corbett by independent parties; provided, however, that Mark Corbett shall not provide Seller with any form of legal or financial advice at any time, and further provided that such agency relationship shall immediately terminate upon the closing of a sale of the Payments, unless otherwise terminated as provided for herein.
2. The Payments to be offered for sale under this Sales Assistance Agreement, along with the underlying payment source are described as follows:

|                           |                            |
|---------------------------|----------------------------|
| Name of Payee/Annuitant:  | Daniel H. Prigge           |
| Source of Payments:       | VA Disability Compensation |
| Annuity Policy Number:    |                            |
| Designated Payments/Term: | \$1,225/8 years            |
| Purchase Price:           |                            |
| Vendor Name:              | Mark Corbett               |

3. Should a third party Buyer accept the Offer of Sale and Subsequently purchase the payments, Seller shall pay Mark Corbett a commission at the closing of such sale in consideration for the administrative assistance provided to seller pursuant to this Sales Assistance Agreement. (This commission is already figured into your purchase price as provided by your vendor.)
4. Prior to acceptance by a third party Buyer of the Offer of Sale, either party may terminate this Sales Assistance Agreement for any reason upon three (3) days written notice to the other party.
5. During the term of this Sales Assistance Agreement, Seller shall not sell or attempt to sell the Payment or a right to purchase the Payments to any third party Buyer.
6. During the term of the Sales Assistance Agreement, Seller shall not circumvent nor attempt to circumvent Mark Corbett in any matter relating to this Sales Assistance Agreement, including, but not limited to, contacting or attempting to contact third party Buyer(s).

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7. ACKNOWLEDGEMENT OF RISK. SELLER AND MARK CORBETT EXPRESSLY ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

7.1 SELLER AGREES THAT THE TRANSACTION(S) CONTEMPLATED BY THIS SALES ASSISTANCE AGREEMENT SHALL CONSTITUTE VALID SALE(S) OF PAYMENTS AND SHALL NOT CONSTITUTE IMPERMISSIBLE ASSIGNMENTS(S), TRANSFER(S), OR ALIENATION OF BENEFITS BY SELLER AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS EXIST.

7.2 BY EXECUTING THIS SALES ASSISTANCE AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT SELLER IS AWARE OF AND EXPRESSLY ACCEPTS ALL RISKS AND OBLIGATIONS, INCLUDING THOSE DESCRIBED IN THE SELLER DISCLOSURE AGREEMENT, ASSOCIATED WITH THE TRANSACTION(S) CONTEMPLATED HEREIN.

7.3 SELLER ACKNOWLEDGES AND AGREES THAT MARK CORBETT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING WHETHER A COURT OF LAW WOULD INTERPRET THE TRANSACTION(S) CONTEMPLATED HEREIN AS INVALID ASSIGNMENT(S), TRANSFER(S), OR ALIENATION OF BENEFITS, OR OTHERWISE DEEM THE TRANSACTION INVALID.

8. During this process, Mark Corbett will collect information regarding the Seller. Seller acknowledges this and consents to Mark Corbett recording any conversations between the parties and providing copies of the same to potential Buyers, their Agents, Attorneys or assigns or parties offering third party products to the Buyer or Seller (or both).

9. Seller acknowledges and agrees that Mark Corbett is under no obligation to return to Seller any information that Mark Corbett has accumulated throughout this process.

10. RELEASE OF LIABILITY. In consideration of the transaction contemplated and the mutual promises contained in this agreement and other agreements with Mark Corbett that relate to this transaction, as well as any consideration paid in conjunction therewith, the Seller acknowledges and agrees:

10.1 To hold Mark Corbett harmless and hereby releases Mark Corbett from liability for any and all claims, causes of action, any of which may be known or unknown, that may arise out of this transaction;

10.2 that Mark Corbett does not make any representations or warranties and is not liable for any and all claims and causes of action, any of which may be known or unknown, that may arise out of any dealing, transaction, contract(s), and/or agreement entered into/undertaken by the Buyer, Agent, or Distributor with any organization(s)/person(s) other than Mark Corbett; and

10.3 To indemnify and reimburse Mark Corbett for any and all expenses including, but not limited to, legal expenses associated with Mark Corbett's enforcement of any provision of this agreement.

11. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and the remainder of this Agreement shall remain in full force and effect. In no event shall Mark Corbett's liability to any party exceed one thousand (\$1,000.00) U.S. dollars.

Initial MC

12. Seller acknowledges and agrees that Mark Corbett makes no warranties, guarantees or representations regarding whether Seller will be successful in this process.
13. Seller acknowledges and agrees that his/her case must meet private party guideline requirements, (namely Vendors, Distributors, Buyers, Buyer's Agents and Attorneys, and/or private party contract requirements) and that Mark Corbett has no control and is not liable for a private party's determination that the Seller is unsuitable.
14. Seller also acknowledges and agrees that Mark Corbett can transmit his/her information to the aforementioned third parties listed in paragraph thirteen (13) to determine Seller's suitability.
15. Mark Corbett reserves the right to refuse to work with any Seller, for any reason, and at any time and without recourse.
16. This Agreement shall be construed according to the laws of the State of South Carolina, without regard to choice of law principles.
17. The Seller agrees to personal jurisdiction in Greenville County, South Carolina and for venue in any proceeding regarding this agreement to be in the Court of Common Pleas in Greenville County, South Carolina.
18. The Seller agrees that any litigation based upon this agreement shall proceed solely on an individual basis without the right for any claims to be litigated on a class action basis or a bases involving claims brought in a purported representative capacity on behalf of others.

Furthermore, no verdict will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to this contract.

*IN WITNESS WHEREOF, the parties have executed this Sales Assistance Agreement as of the Effective Date.*

  
"Seller" Signature

Daniel Prigge

"Seller" Printed Name

*Current Address:*

  
 WI 

*Email Address:*

daniel.prigge1@



**PERFORMANCE ARBITRAGE COMPANY, INC.  
STRUCTURED ASSET PURCHASE APPLICATION**

The Payments to be purchased pursuant to this Purchase Application are described as follows:

Payment Obligor: Veteran's Administration Invoice Number: PRN1785  
Payment Period: 96 monthly payments Purchase Price: \$89,023.94  
Start Date: 5/15/2017 Aggregate Value: \$117,600.00  
End Date: 4/15/2025 Effective Rate of Return\*: 7.500%  
Payment Amount: \$1,225.00 Distribution Channel: Financial Product Distributors, LLC

**BUYER'S INFORMATION**

Social Security or EIN: [REDACTED]  
Name: Moreno Legacy Trust  
Mailing Address: [REDACTED] AZ [REDACTED]  
Phone Numbers: home: [REDACTED] cell: [REDACTED]  
Email Address: z@[REDACTED]

A purchase of Payments is only suitable for persons who have adequate financial means, and who will not need immediate liquidity from this asset. There is no public market for this asset, and Buyer cannot be assured that one will develop; which means that it may be difficult for Buyer to later sell this asset. Buyer acknowledges and agrees that Performance Arbitrage Company, Inc. ("PAC, Inc.") and its Distributors make no determination as to the suitability of the purchase for the Buyer.

Buyer acknowledges and agrees that PAC, Inc., its Distributors, and their engaged professionals are not providing, and do not provide, any legal, tax, financial, or other advice of any nature to Buyer regarding this transaction. Buyer is strongly recommended to consult his/her own professional advisor(s) regarding these matters.

Buyer acknowledges and agrees that certain closing costs shall be included in the Purchase Price in order to affect the required transfers. Buyers who have a registered IRA, Keogh, or other such qualified account may be eligible to purchase this asset through such an account. Neither PAC, Inc., its Distributors, or their engaged professionals make any representations or assume any responsibility or liability to the account custodian, participants, Buyer, or beneficiaries thereof as to the tax ramifications of any such purchase, the suitability or eligibility of such purchase under the respective qualified account, or that such purchase comports with Internal Revenue Service or other governmental rules and regulations pertaining to such accounts thereunder.



## LIFE CONTINGENCY

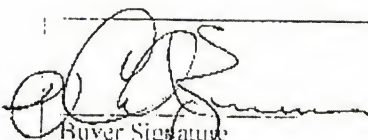
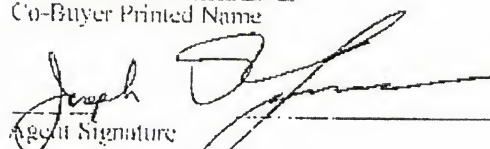
I understand that because the Payments may be life contingent that I may require the Seller to acquire a life insurance policy and have it be collaterally assigned to me to secure the Payments. Conversely, I may require the Seller to enter into a private party contract to address the failure of the Payments due to death of the Seller.

\_\_\_\_\_ By initialing here, I/we require the Seller to have a life insurance policy and for the payment of the premiums on the collaterally assigned life insurance policy to be facilitated by my escrow agent.

☒ By initialing here, I/we require the Seller to enter into a private party contract to address the failure of the Payments due to death of the Seller.

\_\_\_\_\_ By initialing here, I/we knowingly decline these risk reduction methods.

PLEASE INDICATE YOUR CHOICE ABOVE. If you choose this coverage, it will be included in the Purchase Price and Effective Rate of Return information provided on page one (1) of this Purchase Application. Evidence of your choice will be provided to you subsequent to closing of the purchase of Payments.

|  |                   |
|--|-------------------|
| <br>Buyer Signature | 3/17/2017<br>Date |
| Charles Zimmerman, as POA<br>Buyer Printed Name  |                   |
| _____<br>Co-Buyer Signature  | _____<br>Date     |
| _____<br>Co-Buyer Printed Name   |                   |
| <br>Agent Signature | 3/17/2017<br>Date |
| Joseph DeSina<br>Agent Printed Name  |                   |

*\*The Effective Rate of Return is a financial industry term of art that defines the rate of return generated after calculating the purchase price and the contract rate of return and applying monthly compounding. However, this particular transaction has inherent risks that may impact the actual return if the Seller breaches his/her obligations under the contract and in this context Effective Rate of Return is not a guaranteed rate of return.*

Arizona DRIVER LICENSE USA



9- CLASS D  
10- END NONE  
12- REST A  
1 ZIMMERMAN  
2 CHARLES D  
3 [REDACTED]  
4 [REDACTED] AZ [REDACTED]

4b EXP 09/09/2019 4a ISS 09/09/2014  
15 SEX M 16 EYES BRO  
16 HGT 5'-11" 18 HAIR WHI  
17 WGT 185 lb

*Charles D. Zimmerman*

DD 1553B5798Z1618C9

## PURCHASE ASSISTANCE AGREEMENT

This Purchase Assistance Agreement is made effective this 17th day of March, 2017 ("Effective Date"), by and between Performance Arbitrage Company, Inc. ("PAC, Inc."), Financial Product Distributors, LLC ("Distributor") and Joseph DeSimone ("Buyer's Agent"), together, and/or individually, or in combination, and Moreno Legacy Trust ("Buyer").

### RECITALS

WHEREAS, from time to time, Seller may desire to sell certain fixed payments which have been distributed to and received by the Seller from certain Structured Assets ("Payments") in exchange for a discounted lump sum payment;

WHEREAS, Buyer desires to purchase such Payments from Seller;

WHEREAS, Buyer desires to engage Agents to provide Buyer with administrative assistance in connection with the purchase of Payments; and

WHEREAS, Buyer desires for PAC to accept such engagement subject to the terms and conditions contained in this Purchase Assistance Agreement.

NOW THEREFORE, in consideration of the mutual covenants and benefits herein contained, the receipt and sufficiency of which is hereby acknowledged; Buyer, PAC, Inc., its Distributors, Buyer's Agent, and their engaged agents including the escrow agent, and other professionals agree as follows:

1. Price Quote and Escrow. Pursuant to this Purchase Assistance Agreement, PAC, Inc. shall endeavor to deliver to Buyer from time to time, by and through the Buyer's Agent and/or Distributor, a Purchase Application from Seller's Agent. Such Purchase Applications will describe certain Payments for sale at that time, and will provide Buyer an opportunity to offer to purchase such Payments. If Buyer desires to purchase such Payments described in the Purchase Application, the Buyer shall execute the Purchase Application provided to Buyer by Buyer's Agent and/or Distributor; and return the signed Purchase Application to Buyer's Agent. If PAC, Inc., on behalf of the Seller, accepts Buyer's offer as set forth in the Purchase Application, PAC, Inc. shall notify Buyer of the same. Thereafter, pursuant to closing of the purchase of Payments, the Buyer shall, as directed in the Purchase Application, deposit into an escrow or other trust account, subject to the terms and conditions of the Purchase Application, an amount equal to the Buyer's offer as indicated in the Purchase Application.

2. The Purchase Price shall be paid in legal US Dollars and payable to Upstate Law Group, LLC IOLTA to be held pending the finalization of the transaction and delivered to the following address:

Upstate Law Group, LLC

SC



### 3. Closing and Payment.

3.1. Documents. All original documents should be returned to:

Upstate Law Group, LLC

Attn: Case Closing

SC

3.2. Closing. The closing of each purchase and sale of Payments ("Closing") shall occur upon the completion of all of the following: (1) funding as required by the Purchase Application into escrow by the Buyer (as described herein); (2) delivery to and receipt by the Buyer of a complete Fulfillment Kit, and receipt and acceptance of the same by Buyer; (3) completion of all requirements of the escrow agent; and (4) appropriate disbursement and closing of this transaction by the escrow agent.

3.3. Conveyance. Upon disbursement by the escrow agent of the Purchase Price as set forth in the Purchase Application, and all payments attendant therewith; the transaction between Seller and Buyer shall constitute a final sale, grant, transfer and conveyance by Seller to Buyer of Seller's rights and interest in the Payments after it has been distributed to Seller, as described in the Contract for Sale of Payments and the Security Agreement. Buyer understands and agrees that Payment Source and underlying asset shall remain at all times the sole property of Seller and shall remain under the sole control of Seller per federal and/or state law.

3.4. Price and Payment. The Purchase Price set forth in each Purchase Application shall be paid in accordance with the funding instructions mutually agreed upon by the parties to this Purchase Assistance Agreement, and as provided in the Fulfillment Kit. It is agreed that any commissions due shall be calculated, on the day of funding, from a pre-negotiated discount rate.

3.5. Time is of the Essence. Buyer acknowledges that time is of the essence in this transaction with respect to all provisions of this Purchase Assistance Agreement that specify a time for performance, and that unreasonable delay may constitute a breach of this agreement; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Purchase Assistance Agreement.

### 4. Non-Circumvention.

4.1. For a period of five (5) years from the Effective Date of this Purchase Assistance Agreement, Buyer shall refrain from soliciting business or contracts from sources not their own which have been made available to Buyer either by or through PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction; or resulting from the efforts of PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction, without the express written permission of PAC, Inc. In addition, all parties to this Purchase Assistance Agreement, including, but not limited to, signatories, affiliates, subsidiaries, partners, relatives, heirs, successors, assigns, and agents to all of the parties to this Purchase Assistance Agreement, will maintain complete confidentiality regarding the information, aspects, terms, and conditions of the Contract for Sale of Payments, the Payments, and Purchase Application; and, unless required by law or to enforce this contract, will only disclose such information, other than to the party's attorneys, auditors, vendees, investors, senior managers, or such employees whose knowledge is required to carry out the terms of this Purchase Assistance Agreement, under mutual written agreement with the other party, and only after written permission has been received from the originator of the source.

4.2. The Buyer and PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction further agree not to enter into business transactions with banks, investors, brokers, co-brokers, sources of funds, or other bodies, the names of which have been provided by either party, unless written permission has been obtained from the other party, or parties, to do so. For the sake of this Purchase Assistance Agreement, it does not matter whether the information is obtained from a natural or a legal person. The Buyer also undertakes not to make use of a third party to circumvent this Purchase Assistance Agreement.

4.3. In the event of circumvention of this Purchase Assistance Agreement by the Buyer, PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction shall be entitled to damages equal to the maximum service it should realize from such a transaction plus any and all expenses; including, but not limited to, all reasonable legal fees and expenses incurred to recover the lost revenue.

5. Cooperation. PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction shall cooperate with the Buyer to instruct and notify the escrow agent identified in the Contract for Sale of Payments to make the Payments to Buyer in accordance with the terms of this Purchase Assistance Agreement. PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction shall direct all appropriate parties that such payments, if check or note, are to be made payable to and sent to:

Upstate Law Group, LLC

SC

6. Administrative Assistance. Buyer and Buyer's Agents desire, acknowledge, and agree that in connection with Buyer's purchase of the Payments PAC, Inc., and its Distributors shall provide to Buyer only administrative assistance, that all financial advice to Buyer pertaining to this transaction is being solely provided by the Buyer's Agent, and that any legal advice Buyer may need should be sought by Buyer from Buyer's own, separate legal advisors

7. ACKNOWLEDGMENT OF RISK. BUYER AND BUYER'S AGENT EXPRESSLY ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

7.1. BOTH PARTIES INTEND THAT THE TRANSACTION CONTEMPLATED BY THIS PURCHASE ASSISTANCE AGREEMENT SHALL CONSTITUTE A VALID SALE OF PAYMENTS, AND SHALL NOT CONSTITUTE AN IMPERMISSIBLE ASSIGNMENT, TRANSFER, OR ALIENATION OF BENEFITS BY SELLER AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS EXIST AS DISCLOSED IN THE ACCOMPANYING DISCLOSURE OF RISKS STATEMENT.

7.2. BY EXECUTING THIS PURCHASE ASSISTANCE AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS AWARE OF AND EXPRESSLY ACCEPTS ALL RISKS ASSOCIATED WITH THE TRANSACTION CONTEMPLATED HEREIN AS DETAILED IN THE DISCLOSURE OF RISKS STATEMENT, INCLUDING THE DECLARATION OF UNKNOWN AND UNFORESEEN RISKS.

7.3. BUYER ACKNOWLEDGES AND AGREES THAT PAC, INC., ITS DISTRIBUTORS, AND OTHER PROFESSIONALS ENGAGED BY THE BUYER'S



AGENT FOR THIS TRANSACTION, INCLUDING THEIR ATTORNEYS AND ASSIGNS, MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING WHETHER A COURT OF LAW WOULD INTERPRET THE TRANSACTION CONTEMPLATED HEREIN AS AN INVALID ASSIGNMENT, TRANSFER, OR ALIENATION OF BENEFITS, OR OTHERWISE DEEM THE TRANSACTION INVALID.

**8. Wiring of Funds.** The Buyer and PAC, Inc., its Distributors, and other professionals engaged by Buyer's Agent for this transaction acknowledge that the escrow agent cannot electronically transfer or wire funds later than 3:00 PM EST. Buyer agrees and acknowledges that transactions must be completed in sufficient time in order to allow mailing of documents and wiring of funds.

**9. Assumption.** Subject to the terms and conditions of this Purchase Assistance Agreement, and in accordance with the Contract for Sale of Payments, the Buyer shall accept the conveyance of the Payments described in the Contract for Sale of Payments; and shall also assume, perform, pay, and discharge all of the duties, liabilities, and obligations required under the Contract for Sale of Payments.

**10. Entire Agreement.** Neither party has been induced to enter into this Purchase Assistance Agreement by any covenant, representation, nor warranty not specifically set forth herein. This Purchase Assistance Agreement supersedes all prior agreements, arrangements, and understandings, whether oral or written, and all other communications between Buyer and her/his Agent concerning the subject matter hereof. No modification, waiver, release, rescission, or amendment of any provision of this Purchase Assistance Agreement shall be made except by a written instrument duly executed by each of the parties hereto.

**11. Binding Effect.** This Purchase Assistance Agreement shall inure to the benefit of and be binding upon the Buyer's Agent, the Buyer, and their respective assistants, agents, successors, heirs, and assigns.

**12. Severability.** Any invalid or unenforceable provision shall be deemed severed from this Purchase Assistance Agreement to the extent of its invalidity or unenforceability, and the remainder of this Purchase Assistance Agreement shall remain in full force and effect.

**13. Counterparts.** This Purchase Assistance Agreement may be executed in two (2) or more counterparts which, when taken together, shall be deemed an original and constitute one and the same document. Facsimile or other electronic transmission of executed signature pages shall be sufficient to bind the executing party, and shall be admissible the same as an original in any court proceeding.

**14. Confidentiality.** PAC, Inc., its Distributors, other professionals engaged by Buyer's Agent for this transaction, and the Buyer agree that the contents of this Purchase Assistance Agreement shall remain confidential, and shall not be disclosed to any person or entity, other than the party's attorneys, auditors, vendees, investors, senior managers, or such employees whose knowledge is required to carry out the terms of this Purchase Assistance Agreement, except as may be required by law, in order to enforce this agreement or upon reasonable notice to all parties.

**15. Section Headings.** Section headings contained in this Purchase Assistance Agreement are inserted for convenience or reference only, shall not be deemed to be a part of this Purchase Assistance Agreement for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

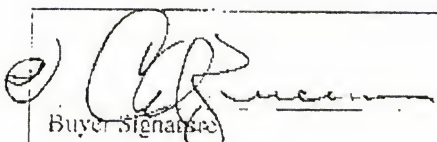


16. Governing Law. This Purchase Assistance Agreement shall be exclusively construed according to the laws of the State of South Carolina, without regard to choice of law principles or applicable laws in the Buyer's state of residency.

17. Venue. The Buyer agrees to personal jurisdiction and exclusive forum venue for any legal proceeding regarding this agreement to be in the Court of Common Pleas in Greenville County, South Carolina.

18. Class Action Waiver. Any litigation based upon this agreement shall proceed solely on an individual basis without the right for any claims to be litigated on a class action basis, or on any basis involving claims brought in a purported representative capacity on behalf of others. Buyer agrees that her/his claims, if any, may not be joined or consolidated unless agreed to in writing by all parties. Furthermore, no verdict will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to this contract.

IN WITNESS WHEREOF, the parties have executed this Purchase Assistance Agreement as of the Effective Date.

|  |  |
|--|--|
| <br>Buyer Signature | <u>3/17/2017</u><br>Date   |
| Charles Zimmerman, as POA<br>Buyer Printed Name  |  |
| Co-Buyer Signature   | Date   |
| Co-Buyer Printed Name  |  |
| Current Physical Address:<br>[REDACTED]<br>[REDACTED] AZ [REDACTED]                                  | Email:<br>z@[REDACTED]<br>Phone:<br>home: [REDACTED]<br>cell: [REDACTED] |

## CONTRACT FOR SALE OF PAYMENTS

This Contract for Sale of Payments ("Contract for Sale") is made effective on the date of signing, by and between Daniel H Prigge ("Seller") and Moreno Legacy Trust ("Buyer").

### RECITALS

**WHEREAS**, Seller desires to sell certain fixed payments arising from a certain Structured Asset once they have been distributed to and received into an account of Seller ("Payments") as described in this Contract for Sale; and,

**WHEREAS**, Buyer desires to purchase the Payments in accordance with the terms and conditions contained herein.

**NOW THEREFORE**, in consideration of the mutual covenants and benefits herein contained, the receipt and sufficiency is hereby acknowledged, Seller and Buyer agree as follows:

1. Seller agrees to sell and Buyer agrees to purchase the Payments in accordance with, and subject to the terms and conditions of, this Contract for Sale.


2. In connection with this Contract for Sale, Seller executed a certain Sales Assistance Agreement and Security Agreement. Said agreements are incorporated herein by reference and made a part hereof, and all defined terms contained in said Sales Assistance Agreement and Security Agreement shall have the same meaning when used herein, unless otherwise defined. Buyer also executed a Purchase Application, Purchase Assistance Agreement and a Disclosure of Risks Statement, which are also incorporated herein by reference and made a part hereof. All defined terms contained in said Purchase Application, Purchase Assistance Agreement and Disclosure of Risks Statement shall have the same meaning when used herein, unless otherwise defined.

3. The Payments that are the subject of this Contract for Sale stem from the following income source ("Payment Source"), and are more particularly described as follows:

Source of Payments: VA Disability Compensation  
Name of Payee/Annuitant: Daniel H Prigge  
Sales Assistance Agreement: ON FILE  
Annuity Contract/Benefit Letter: ON FILE  
Annuity Issuer/Pension Obligor: Veteran's Administration  
Life Insurer (if applicable): NA  
Life Insurance Policy (if applicable): NA  
Purchase Assistance Agreement: ON FILE  
Description of Payments: 8 years of \$1,225.00 a month; start date 5/15/17 end date 4/15/25  
Start date subject to ratification on or before: 04/26/17

4. Payment Servicing. By executing this Contract for Sale, Seller and Buyer acknowledge receipt of the costs for the services of the Buyer's escrow agent and each confirms their agreement to the terms of the same, relative to the servicing of the Payments. The servicer of the Payments shall be Upstate Law Group, LLC, located in Easley, South Carolina (the "Escrow Company") in accordance with one of the following methods (**SELLER MUST INITIAL ONE SELECTION**):

Buyer \_\_\_\_\_ Co-Buyer \_\_\_\_\_

Seller 



4.1 \_\_\_\_\_ Seller agrees to direct Payments to be received and serviced by the Escrow Company in an account from which the Buyer shall be paid in connection with the closing of the sale of the Payments (the "Closing") and any additional amounts received over and above the Payments shall be sent to Seller per his/her instructions; provided however, that the Payment Source shall remain at all times the sole property of Seller and shall remain under the sole control of Seller; or

4.2 OR Seller agrees to execute such documents as necessary to effect an automatic draft from an existing account s/he owns where the payment is currently deposited so that the Buyer's portion of the Payments may be sent to the Escrow Agent on or before the 2nd day of each month; however, the Payment Source shall remain at all times the sole property of Seller and shall remain under the sole control of Seller;

5. Consideration. For the consideration described in the Sales Assistance Agreement, Seller shall transfer and sell to Buyer at Closing one hundred percent (100%) of Seller's right, title, and interest in and to the Payments as described above after said payment is received from the Payment Source; provided however, that the Payment Source and underlying asset shall remain the sole property of Seller and shall remain under the control of Seller per Federal and/or State law.

6. Representations. Seller represents and warrants that, to the best of Seller's knowledge, all statements and information contained within the Sales Assistance Agreement concerning the Payments and the Payment Source were true as of the date of the Sales Assistance Agreement and have continuously remained true and correct in all respects through the date of this Contract for Sale, and further shall remain true and correct through the Closing.

7. Life Insurance or a Private Party Contract. Because the Payments are life contingent, prior to Closing and continuing through the terms of this Contract for Sale, Seller shall acquire and maintain a valid life insurance policy in an amount not less than the total amount of the Buyer's Purchase Price (as described in the Purchase Application) to this Contract for Sale or may be required by Buyer to purchase some other private party contract to protect Buyer's interest in this Agreement. If life insurance is to be provided, Seller shall execute a valid Collateral Assignment of said life insurance policy to the benefit of Buyer for the period of this Contract for Sale and shall undertake no efforts to interfere with the policy remaining in full force and effect for the benefit of Buyer during the period of this Contract for Sale. Furthermore, Seller shall undertake and respond to all efforts for cooperation with the Buyer and the Buyer's agents regarding the assignment and servicing of said policy, including, but not limited to, executing any documents or releases that the life insurance company may require to successfully assign said policy to Buyer and promptly forwarding any notices about the underlying insurance, including payment issues, modifications, or cancellation.

8. Escrow. Beginning at Closing, Buyer shall receive the Payments at the designated escrow account at Upstate Law Group, LLC which will be created per Seller's instructions, though the Payment Source and underlying asset shall remain the sole property of Seller and shall remain under the control of Seller per Federal law. Prior to the closing of this transaction, Seller shall provide proof to Buyer of the designation of the Escrow Agent to receive payments and shall continue to have the Payments serviced through said escrow account for the benefit of Buyer for the duration of the Contract for Sale.

9. **ACKNOWLEDGMENT OF RISK**. SELLER AND BUYER EXPRESSLY ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

9.1. SELLER INTENDS TO ACTUALLY RECEIVE DISBURSEMENT OF EVERY PAYMENT DESCRIBED UNDER THIS CONTRACT FOR SALE, SELLER SHALL RETAIN AT ALL TIMES COMPLETE CONTROL OVER THE PAYMENTS AND THE UNDERLYING ASSET DESCRIBED HEREIN, AND SELLER INTENDS TO SELL EVERY PAYMENT DESCRIBED HEREIN TO BUYER AS CONTEMPLATED BY THIS CONTRACT AFTER ACTUAL RECEIPT OF DISBURSEMENT PER THIS CONTRACT.

Buyer \_\_\_\_\_ Co-Buyer \_\_\_\_\_

Seller RP



9.2. BOTH PARTIES INTEND THAT THE TRANSACTION(S) CONTEMPLATED BY THIS CONTRACT FOR SALE SHALL CONSTITUTE VALID SALE(S) OF PAYMENTS AND SHALL NOT CONSTITUTE IMPERMISSIBLE ASSIGNMENT(S), TRANSFER(S), OR ALIENATION OF BENEFITS BY SELLERS AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS PERSIST.


9.3. BY EXECUTING THIS CONTRACT FOR SALE, BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT BUYER AND SELLER ARE AWARE OF AND EXPRESSLY AND SOLELY ACCEPT ALL RISKS ASSOCIATED WITH THE TRANSACTION(S) CONTEMPLATED HEREIN, INCLUDING, BUT NOT LIMITED TO, THOSE APPEARING IN THE BUYER'S DISCLOSURE OF RISKS STATEMENT AND SELLER'S COST DISCLOSURES.

9.4. BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT PERFORMANCE ARBITRAGE COMPANY, INC. (PAC, INC.), THEIR DISTRIBUTORS, AGENTS, ATTORNEYS AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING WHETHER A COURT OF LAW WOULD INTERPRET THE TRANSACTION(S) CONTEMPLATED HEREIN AS INVALID ASSIGNMENT(S), TRANSFER(S) OR ALIENATION OF BENEFITS, OR OTHERWISE DEEM THE TRANSACTION INVALID.

10. INDEMNIFICATION. SHOULD THE SELLER, IN ANY WAY, CAUSE OR PERMIT WITHOUT CORRECTION THIS CONTRACT FOR SALE TO BE IN BREACH OR DEFAULT, SELLER CONSENTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE BUYER FOR ALL EXPENSES THE BUYER OR ITS AGENTS AND ATTORNEYS MAY REASONABLY INCUR TO ENFORCE THIS CONTRACT FOR SALE, INCLUDING BUT NOT LIMITED TO LEGAL EXPENSES AND TRANSACTIONAL FEES. AS CONSIDERATION FOR THE VALUABLE SERVICES PROVIDED BY PAC, INC., THEIR DISTRIBUTORS, AGENTS, ATTORNEYS AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS, BOTH BUYER AND SELLER HEREBY AGREE TO RELEASE AND HOLD HARMLESS PAC, INC., THEIR DISTRIBUTORS, AGENTS, ATTORNEYS AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS AND THEIR ATTORNEYS FOR ANY AND ALL CAUSES OF ACTION, KNOWN OR UNKNOWN, ARISING OUT OF THE TRANSACTION(S), INCLUDING BUT NOT LIMITED TO THE DUTIES CONTEMPLATED BY THIS CONTRACT FOR SALE OF PAYMENTS.

11. LIQUIDATED DAMAGES. IT IS ACKNOWLEDGED THAT THE BUYER IS RELYING UPON SELLER'S INHERENT DUTY OF GOOD FAITH AND FAIR DEALING IN THE MAKING AND EXECUTION OF THIS CONTRACT. SELLER ALSO RECOGNIZES THAT FAILURE ON SELLER'S PART TO ABIDE BY THIS CONTRACT WILL CAUSE THE BUYER TO INCUR SUBSTANTIAL AND CONSEQUENTIAL ECONOMIC DAMAGES AND LOSSES OF TYPES AND IN AMOUNTS WHICH MAY BE IMPOSSIBLE TO COMPUTE AND ASCERTAIN WITH CERTAINTY AS A BASIS FOR RECOVERY BY THE OWNER OF ACTUAL DAMAGES. ACCORDINGLY, LIQUIDATED DAMAGES REPRESENT A FAIR, REASONABLE AND APPROPRIATE REMEDY FOR SAID DAMAGES. SELLER AGREES THAT LIQUIDATED DAMAGES MAY BE ASSESSED AND RECOVERED BY THE BUYER AGAINST THE SELLER WITHOUT THE BUYER BEING REQUIRED TO PRESENT ANY EVIDENCE OF THE AMOUNT OR CHARACTER OF ACTUAL DAMAGES SUSTAINED BY REASON THEREOF. ACCORDINGLY, SELLER SHALL BE LIABLE TO THE BUYER FOR PAYMENT OF LIQUIDATED DAMAGES IN THE AMOUNT DOUBLE THE INCOME STREAM PAYMENT FOR EACH INCOME STREAM PAYMENT THAT SELLER MISDIRECTS OR PREVENTS BUYER FROM RECEIVING. SUCH LIQUIDATED DAMAGES ARE INTENDED TO REPRESENT ESTIMATED ACTUAL DAMAGES AND ARE NOT INTENDED AS A PENALTY.

Buyer \_\_\_\_\_ Co-Buyer \_\_\_\_\_

Seller 



12. REMEDIES. BY SIGNING BELOW, BOTH PARTIES CONSENT AND AGREE THAT THE APPROPRIATE REMEDY FOR ANY BREACH OF THIS CONTRACT FOR SALE IS AND SHALL BE SPECIFIC PERFORMANCE, IN ADDITION TO ANY OTHER AVAILABLE LEGAL OR EQUITABLE REMEDIES AND THAT SUCH REMEDIES SHALL BE GRANTED BY ANY COURT OF LAW IN THE FORUM STATE. SUCH A REMEDY SHALL BE GRANTED THAT PLACES BOTH PARTIES IN THE EXACT POSITION THE PARTIES INTENDED TO BE IN BY MAKING THIS AGREEMENT.

13. HOLDING ACCOUNT. SELLER AGREES THAT DURING ANY PERIOD OF DISPUTE BETWEEN THE PARTIES TO THIS AGREEMENT OVER ANY TERMS IN THIS CONTRACT, THAT A HOLDING ACCOUNT SHALL BE ESTABLISHED BY THE ESCROW COMPANY WHEREBY THE ASSET IN DISPUTE SHALL BE DEPOSITED AND KEPT UNTIL SUCH TIME AS THE DISPUTE IS RESOLVED.

14. Waiver. The parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this agreement shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

15. Separate Parts. This agreement shall be permitted to be executed in several parts and a facsimile of this agreement shall be considered as valid as the original.


16. Governing Law. The parties agree that South Carolina has the most significant contact with this transaction and this Contract for Sale and all other parts of this transaction shall be exclusively construed according to the laws of the State of South Carolina, without regard to choice of law principles or reliance upon any laws in the Seller's or Buyer's state of residence.

17. Venue. The parties agree that the exclusive venue for any proceeding relating to this agreement shall be in the Court of Common Pleas in Greenville County, South Carolina.

18. Class Action Waiver. Any litigation based upon this agreement shall proceed solely on an individual basis without the right for any claims to be litigated on a class action basis or any other on bases involving claims brought in a purported representative capacity on behalf of others. Buyer and Seller each agree that his/her claims, if any, may not be joined or consolidated unless agreed to in writing by all parties. Furthermore, no verdict will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to this contract.

19. INDEMNIFICATION AND RELEASE. THE PARTIES TO THIS CONTRACT FOR SALE AGREE, ADDITIONAL CONSIDERATION FOR THE SERVICES PERFORMED BY PAC, INC., THEIR AGENTS, ATTORNEYS AND ASSIGNS AND/OR THE BUYER'S AGENT'S DISTRIBUTORS, THEIR ATTORNEYS AND ASSIGNS, TO HOLD PAC, INC., THEIR AGENTS, ATTORNEYS AND ASSIGNS AND/OR THE BUYER'S AGENT'S DISTRIBUTORS, THEIR ATTORNEYS AND ASSIGNS INCLUDING, BUT NOT LIMITED TO THEIR OFFICERS, DIRECTORS AND ASSIGNS HARMLESS FOR ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, ARISING OUT OF THE TRANSACTION(S) CONTEMPLATED BY THIS CONTRACT.

Buyer \_\_\_\_\_ Co-Buyer \_\_\_\_\_

Seller 

SELLER:

Signature

Daniel H Prigge

Printed Name of Seller

Apr 24, 2017

Date

BUYER:

Signature

Printed Name of Buyer

Date

NOTARY PUBLIC ACKNOWLEDGMENT

SELLER:

STATE OF Wisconsin  
COUNTY OF Brown  
On April 24th, 2017, before me,  
Sarah J. Polarek Notary Public for  
Wisconsin (State), personally  
appeared Daniel H Prigge (Seller)  
Personally known to me to be the person whose  
name is subscribed to the within instrument and  
Acknowledged to me that he executed the same  
In his authorized capacity, and that by his  
signature on the instrument, the person or the  
entity on behalf of which the person acted,  
executed the instrument, SWORN to before me  
this 24th day of April, 2017.

CO-BUYER:

Signature

Printed Name of Co-Buyer

Date

Notary Signature

Notary Public for

My commission Expires:





## CONTRACT FOR SALE OF PAYMENTS

This Contract for Sale of Payments ("Contract for Sale") is made effective on the date of signing, by and between Daniel H. Prigge ("Seller") and Moreno Legay Trust ("Buyer").

### RECITALS

**WHEREAS**, Seller desires to sell certain fixed payments arising from a certain Structured Asset once they have been distributed to and received into an account of Seller ("Payments") as described in this Contract for Sale; and,

**WHEREAS**, Buyer desires to purchase the Payments in accordance with the terms and conditions contained herein,

**NOW THEREFORE**, in consideration of the mutual covenants and benefits herein contained, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. Seller agrees to sell and Buyer agrees to purchase the Payments in accordance with, and subject to the terms and conditions of, this Contract for Sale.
2. In connection with this Contract for Sale, Seller executed a certain Sales Assistance Agreement and Security Agreement. Said agreements are incorporated herein by reference and made a part hereof, and all defined terms contained in said Sales Assistance Agreement and Security Agreement shall have the same meaning when used herein, unless otherwise defined. Buyer also executed a Purchase Application, Purchase Assistance Agreement, and a Disclosure of Risks Statement, which are also incorporated herein by reference and made a part hereof. All defined terms contained in said Purchase Application, Purchase Assistance Agreement, and Disclosure of Risks Statement shall have the same meaning when used herein, unless otherwise defined.

3. The Payments that are the subject of this Contract for Sale stem from the following income source ("Payment Source"), and are more particularly described as follows:

Source of Payments: VA Disability Compensation  
Name of Payee/Annuitant: Daniel H. Prigge  
Sales Assistance Agreement: ON FILE  
Benefit Letter/Annuity Contract: ON FILE  
Pension Obligor/Annuity Issuer: Veteran's Administration  
Life Insurer (if applicable): N/A  
Life Insurance Policy (if applicable): N/A  
Purchase Assistance Agreement: ON FILE  
Description of Payments: 8 years of \$1,225.00 a month; Start date 5/15/2017, End date 4/15/2025  
Start Date Subject to Ratification on or Before: 4/26/2017

4. **Payment Servicing.** By executing this Contract for Sale, Seller and Buyer acknowledge receipt of the costs for the services of the Buyer's escrow agent; and each confirms their agreement to the terms of the same, relative to the servicing of the Payments. The servicer of the Payments shall be Upstate Law Group, LLC, located in Easley, South Carolina ("Escrow Company") in accordance with one of the following methods (SELLER MUST INITIAL ONE SELECTION):

Seller \_\_\_\_\_

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Buyer 8 Co-Buyer \_\_\_\_\_

ACC000818 / FILE #8695

4.1 \_\_\_\_\_ Seller agrees to direct Payments to be received and serviced by the Escrow Company in an account from which the Buyer shall be paid in connection with the closing of the sale of the Payments ("Closing"), and any additional amounts received over and above the Payments shall be sent to Seller per her/his instructions; provided, however, that the Payment Source and underlying asset shall remain at all times the sole property of Seller and shall remain under the sole control of Seller per federal and/or state law; or

X

4.2 \_\_\_\_\_ Seller agrees to execute such documents as necessary to affect an automatic draft from an existing account s/he owns where the payment is currently deposited, so that the Buyer's portion of the Payments may be sent to the Escrow Agent on or before the 2nd day of each month; provided, however, that the Payment Source and underlying asset shall remain at all times the sole property of Seller and shall remain under the sole control of Seller per federal and/or state law.

5. Consideration. For the consideration described in the Sales Assistance Agreement, Seller shall transfer and sell to Buyer at Closing one hundred percent (100%) of Seller's right, title, and interest in and to the Payments as described above after said payment is received from the Payment Source; provided, however, that the Payment Source and underlying asset shall remain at all times the sole property of Seller and shall remain under the sole control of Seller per federal and/or state law.

6. Representations. Seller represents and warrants that, to the best of Seller's knowledge, all statements and information contained within the Sales Assistance Agreement concerning the Payments and the Payment Source were true and correct as of the date of the Sales Assistance Agreement; and have continuously remained true and correct in all respects through the date of this Contract for Sale, and further shall remain true and correct through Closing.

7. Life Insurance or a Private Party Contract. Because the Payments are life contingent, prior to Closing and continuing through the terms of this Contract for Sale, Seller shall acquire and maintain a valid life insurance policy in an amount not less than the total amount of the Buyer's Purchase Price (as described in the Purchase Application) to this Contract for Sale; or may be required by Buyer to purchase some other private party contract to protect Buyer's interest in this Contract for Sale. If life insurance is to be provided, Seller shall execute a valid Collateral Assignment of said life insurance policy to the benefit of Buyer for the period of this Contract for Sale, and shall undertake no efforts to interfere with the policy remaining in full force and effect for the benefit of Buyer during the period of this Contract for Sale. Furthermore, Seller shall undertake and respond to all efforts for cooperation with the Buyer and the Buyer's agents regarding the assignment and servicing of said policy; including, but not limited to, executing any documents or releases that the life insurance company may require to successfully assign said policy to Buyer, and promptly forwarding any notices about the underlying insurance including payment issues, modifications, or cancellation.


8. Escrow. Beginning at Closing, Buyer shall receive the Payments at the designated escrow account at Upstate Law Group, LLC which will be created per Seller's instructions; provided, however that the Payment Source and underlying asset shall remain at all times the sole property of Seller and shall remain under the sole control of Seller per federal and/or state law. Prior to the Closing of this transaction, Seller shall provide proof to Buyer of the designation of the Escrow Company to receive payments and shall continue to have the Payments serviced through said Escrow Company for the benefit of Buyer for the duration of this Contract for Sale.

9. **ACKNOWLEDGMENT OF RISK**. SELLER AND BUYER EXPRESSLY ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

9.1. SELLER INTENDS TO ACTUALLY RECEIVE DISBURSEMENT OF EVERY PAYMENT DESCRIBED UNDER THIS CONTRACT FOR SALE. SELLER SHALL RETAIN AT ALL TIMES SOLE CONTROL OVER THE PAYMENTS AND THE UNDERLYING ASSET DESCRIBED HEREIN, AND SELLER INTENDS TO SELL EVERY PAYMENT DESCRIBED HEREIN TO BUYER AS CONTEMPLATED BY THIS CONTRACT AFTER ACTUAL RECEIPT OF DISBURSEMENT PER THIS CONTRACT.

Seller \_\_\_\_\_

Page 2 of 5

Buyer  Co-Buyer \_\_\_\_\_

ACC000819 / FILE #8695



9.2. BOTH PARTIES INTEND THAT THE TRANSACTION CONTEMPLATED BY THIS CONTRACT FOR SALE SHALL CONSTITUTE A VALID SALE OF PAYMENTS AND SHALL NOT CONSTITUTE AN IMPERMISSIBLE ASSIGNMENT, TRANSFER, OR ALIENATION OF BENEFITS BY SELLER AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS PERSIST.

9.3. BY EXECUTING THIS CONTRACT FOR SALE, SELLER AND BUYER ACKNOWLEDGE AND AGREE THAT SELLER AND BUYER ARE AWARE OF, AND EXPRESSLY AND SOLELY ACCEPT, ALL RISKS ASSOCIATED WITH THE TRANSACTION CONTEMPLATED HEREIN; INCLUDING, BUT NOT LIMITED TO, THOSE APPEARING IN THE SELLER'S COST DISCLOSURE AND BUYER'S DISCLOSURE OF RISKS STATEMENT.

9.4. SELLER AND BUYER ACKNOWLEDGE AND AGREE THAT PERFORMANCE ARBITRAGE COMPANY, INC. ("PAC, INC."), THEIR DISTRIBUTORS, AGENTS, ATTORNEYS, AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING WHETHER A COURT OF LAW WOULD INTERPRET THE TRANSACTION CONTEMPLATED HEREIN AS AN INVALID ASSIGNMENT, TRANSFER OR ALIENATION OF BENEFITS, OR OTHERWISE DEEM THE TRANSACTION INVALID.

10. INDEMNIFICATION. SHOULD THE SELLER, IN ANY WAY, CAUSE OR PERMIT WITHOUT CORRECTION THIS CONTRACT FOR SALE TO BE IN BREACH OR DEFAULT, SELLER CONSENTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE BUYER FOR ALL EXPENSES THE BUYER OR THEIR AGENTS AND ATTORNEYS MAY REASONABLY INCUR TO ENFORCE THIS CONTRACT FOR SALE; INCLUDING, BUT NOT LIMITED TO, LEGAL EXPENSES AND TRANSACTIONAL FEES. AS CONSIDERATION FOR THE VALUABLE SERVICES PROVIDED BY PAC, INC., THEIR DISTRIBUTORS, AGENTS, ATTORNEYS, AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS, BOTH SELLER AND BUYER HEREBY AGREE TO RELEASE AND HOLD HARMLESS PAC, INC., THEIR DISTRIBUTORS, AGENTS, ATTORNEYS, AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS FOR ANY AND ALL CAUSES OF ACTION, KNOWN OR UNKNOWN, ARISING OUT OF THIS TRANSACTION; INCLUDING, BUT NOT LIMITED TO, THE DUTIES CONTEMPLATED BY THIS CONTRACT FOR SALE.

11. LIQUIDATED DAMAGES. IT IS ACKNOWLEDGED THAT THE BUYER IS RELYING UPON SELLER'S INHERENT DUTY OF GOOD FAITH AND FAIR DEALING IN THE MAKING AND EXECUTION OF THIS CONTRACT FOR SALE. SELLER ALSO RECOGNIZES THAT FAILURE ON SELLER'S PART TO ABIDE BY THIS CONTRACT WILL CAUSE THE BUYER TO INCUR SUBSTANTIAL AND CONSEQUENTIAL ECONOMIC DAMAGES AND LOSSES OF TYPES AND IN AMOUNTS WHICH MAY BE IMPOSSIBLE TO COMPUTE AND ASCERTAIN WITH CERTAINTY AS A BASIS FOR RECOVERY BY THE OWNER OF ACTUAL DAMAGES. ACCORDINGLY, LIQUIDATED DAMAGES REPRESENT A FAIR, REASONABLE, AND APPROPRIATE REMEDY FOR SAID DAMAGES. SELLER AGREES THAT LIQUIDATED DAMAGES MAY BE ASSESSED AND RECOVERED BY THE BUYER AGAINST THE SELLER WITHOUT THE BUYER BEING REQUIRED TO PRESENT ANY EVIDENCE OF THE AMOUNT OR CHARACTER OF ACTUAL DAMAGES SUSTAINED BY REASON THEREOF. ACCORDINGLY, SELLER SHALL BE LIABLE TO THE BUYER FOR PAYMENT OF LIQUIDATED DAMAGES IN AN AMOUNT DOUBLE THE INCOME STREAM PAYMENT FOR EACH INCOME STREAM PAYMENT THAT SELLER MISDIRECTS OR PREVENTS BUYER FROM RECEIVING. SUCH LIQUIDATED DAMAGES ARE INTENDED TO REPRESENT ESTIMATED ACTUAL DAMAGES AND ARE NOT INTENDED AS A PENALTY.

Seller \_\_\_\_\_

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Buyer 3 Co-Buyer \_\_\_\_\_

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12. REMEDIES. BY SIGNING BELOW, BOTH PARTIES CONSENT AND AGREE THAT THE APPROPRIATE REMEDY FOR ANY BREACH OF THIS CONTRACT FOR SALE IS AND SHALL BE SPECIFIC PERFORMANCE, IN ADDITION TO ANY OTHER AVAILABLE LEGAL OR EQUITABLE REMEDIES; AND THAT SUCH REMEDIES SHALL BE GRANTED BY ANY COURT OF LAW IN THE FORUM STATE. SUCH A REMEDY SHALL BE GRANTED THAT PLACES BOTH PARTIES IN THE EXACT POSITION THE PARTIES INTENDED TO BE IN BY MAKING THIS CONTRACT FOR SALE.

13. HOLDING ACCOUNT. SELLER AGREES THAT DURING ANY PERIOD OF DISPUTE BETWEEN THE PARTIES TO THIS CONTRACT FOR SALE, OVER ANY TERMS IN THIS CONTRACT FOR SALE, THAT A HOLDING ACCOUNT SHALL BE ESTABLISHED BY THE ESCROW COMPANY WHEREBY THE ASSET IN DISPUTE SHALL BE DEPOSITED AND KEPT UNTIL SUCH TIME AS THE DISPUTE IS RESOLVED.

14. Waiver. Seller and Buyer agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this Contract for Sale shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

15. Separate Parts. This Contract for Sale shall be permitted to be executed in several parts and a facsimile of this Contract for Sale shall be considered as valid as the original.

16. Governing Law. Seller and Buyer agree that South Carolina has the most significant contact with this transaction and this Contract for Sale; and that all other parts of this transaction shall be exclusively construed according to the laws of the state of South Carolina, without regard to choice of law principles or reliance upon any laws in the Seller's or Buyer's state of residence.

17. Venue. Seller and Buyer agree that the exclusive venue for any proceeding relating to this Contract for Sale shall be in the Court of Common Pleas in Greenville County, South Carolina.

18. Class Action Waiver. Any litigation based upon this Contract for Sale shall proceed solely on an individual basis, without the right for any claims to be litigated on a class action basis or on any other basis involving claims brought in a purported representative capacity on behalf of others. Seller and Buyer each agree that her/his claims, if any, may not be joined or consolidated unless agreed to in writing by all parties. Furthermore, no verdict will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to this contract.

19. INDEMNIFICATION AND RELEASE. SELLER AND BUYER AGREE, AS ADDITIONAL CONSIDERATION FOR THE SERVICES PERFORMED BY PAC, INC., THEIR DISTRIBUTORS, AGENTS, ATTORNEYS, AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS, TO HOLD PAC, INC., THEIR DISTRIBUTORS, AGENTS, ATTORNEYS, AND OTHER ENGAGED PROFESSIONALS AND ASSIGNS INCLUDING, BUT NOT LIMITED TO, THEIR OFFICERS, DIRECTORS, AND ASSIGNS, HARMLESS FOR ANY AND ALL CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, ARISING OUT OF THE TRANSACTION CONTEMPLATED BY THIS CONTRACT FOR SALE.

Seller \_\_\_\_\_

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Buyer  Co-Buyer \_\_\_\_\_

ACC000821 / FILE #8695

SELLER:

Signature \_\_\_\_\_

Printed Name of Seller \_\_\_\_\_

Date \_\_\_\_\_

NOTARY PUBLIC ACKNOWLEDGMENT

SELLER:

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_, Notary Public for  
\_\_\_\_\_, (State), personally  
appeared \_\_\_\_\_ (Seller)  
Personally known to me to be the person whose  
name is subscribed to the within instrument and  
Acknowledged to me that he executed the same  
In his authorized capacity, and that by his  
signature on the instrument, the person or the  
entity on behalf of which the person acted,  
executed the instrument. SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Signature \_\_\_\_\_

Notary Public for \_\_\_\_\_

My commission Expires: \_\_\_\_\_

SEAL:

BUYER (notarization not required):

Signature \_\_\_\_\_

Charles Zimmerman, as POA

Printed Name of Buyer \_\_\_\_\_

3/17/2017

Date \_\_\_\_\_

CO-BUYER:

Signature \_\_\_\_\_

Printed Name of Co-Buyer \_\_\_\_\_

Date \_\_\_\_\_



## DISCLOSURE OF RISKS STATEMENT

A purchase of Payments is subject to a number of risks. By itself, the Payments do not constitute a balanced investment program. You should understand and consider carefully the following risks before purchasing Payments. Additionally, there may be additional risks which are currently unforeseen. You are advised to consult with your own personal legal, tax, and/or financial advisors before deciding whether to purchase Payments.

### RISK FACTORS RELATED TO PURCHASE OF FUTURE INCOME STREAMS

#### Restrictions on Assignability/Collectability

Pension payments fall under regulations that restrict the assignment of the scheduled payments due thereunder. The nature of the Contract for Sale of Payments in this transaction is that the Buyer purchases only Payments that the Seller is receiving. However, by law, the Seller must maintain control over the pension itself at all times, and control over the performance of this contract until the payment leaves the pension obligor. Consequently, this transaction is a purchase of a contractual right to a payment obligation, and not the payment *per se*. Although certain courts have held transactions of this nature to be enforceable, even in the presence of an anti-assignment clause, there is no assurance that a future court would permit the enforcement of payment rights under this arrangement. Additionally, some states, such as California, have a more stringent review of financial transactions and may view these transactions more harshly than other states or locales. Please be advised that an adverse court decision could materially and adversely affect your purchase of Payments.

#### Non-receipt of Scheduled Payment/Collections

Non-receipt of Payments could occur for a number of reasons ranging from administrative delays, to the death of a Seller/Payee/Annuitant, or an intentional payment diversion. An intentional diversion occurs when a Seller redirects any Payments subject to a contract with a Buyer to any entity other than the Buyer in violation of the Seller's contractual agreement with the Buyer. A diversion is viewed as an intentional default/breach by the Seller. It is the responsibility of the Buyer to monitor her/his account for the receipt of expected Payments, and take action for the collection of Payments expected but not received. Buyer's ability to enforce judgments, realize success in the garnishment process (if allowed in the forum state), and prevail in the redirecting of the Payments cannot be guaranteed.

#### Insolvency of an Obligor

The Payments to the Seller come from the assets held in a defined benefit pension plan. While these plans are governed by a myriad of federal laws, rules and regulations, no guarantee can be made that the pension plan may not become underfunded and unable to meet its payment obligations. The vast majority of the Payments originate from and are claims to receive from a governmental or quasi-governmental entity; or a defined-benefit pension plan that at the time of purchase is in good standing with the Pension Benefit Guarantee Corporation ("PBGC"), and which would be backed by the PBGC should the plan be unable to meet its future payment obligations.

#### Effective Rate of Return

The Effective Rate of Return is a financial industry term of art that defines the rate of return generated after calculating the purchase price and the contract rate of return, and applying monthly compounding. However, this particular transaction has inherent risks that may impact the actual return if the Seller breaches his/her obligations under the contract and in this context Effective Rate of Return is not a guaranteed rate of return.

Buyer                      Co-Buyer



### Collection by the Buyer of Policy Death Benefits

In the case that an income stream is life-contingent, you may wish to require the Seller/pensioner to secure a life insurance policy in an amount sufficient to cover the purchase price in effect. Additionally, the Seller/pensioner can be required to sign a collateral assignment of said policy for the Buyer's benefit as part of this transaction. If the Seller/pensioner/insured were to die before the end of the Payment Period, AND the policy on that Seller did not pay a death benefit to the Buyer, the Buyer's Payments would be adversely affected. One reason a death benefit claim could be denied is if the policy lapsed. You may require that a portion of the Purchase Price for Payments purchased be money set aside in an escrow, trust, IOLTA, or similar account and held by an Escrow Agent to pay all future premiums due on the policy for the life of the related insured, or for the full term of the Payments associated with the insured. Nonetheless, there is risk that an insurance premium payment process on a policy could fail; and if the premiums are not paid the policy would lapse, and the Buyer would lose its ownership interest in the policy. In addition, the policy may be subject to contest by the issuing life insurance company. Further, a Seller could interfere with the payment of premiums on the policy after the execution of the contract, though the same would be a violation of the contract. When an insurance company contests a benefit payment claim, it asserts that there is legal justification to deny payment of the policy benefits. Most life insurance policies have contestability clauses that allow insurance companies to challenge the validity of a policy if a claim for benefits is made within a period of two (2) years of the policy's effective date. Among the legal justifications used by insurance companies within the contestability period are suicides, homicides by interested parties, and false statements relating to the health and well-being of the insured on the policy application. After this contestability period has expired, the insurance company generally cannot challenge the enforceability of the policy other than for non-payment of premiums, and in some states certain other exceptions. If the insurance company successfully contests a policy, the policy will be rescinded and declared void; and the insurance company's liability would be limited to a refund of all the insurance premiums paid for the policy, without any accrued interest and further without the portion of the premiums paid to an insurance agent as commissions. A third non-payment risk is if a life insurance company goes out of business, there may not be sufficient funds to pay that liability. Many states have an insurance guarantee fund that provides payments to beneficiaries of insurance companies that go out of business, but the collection process can be prolonged and complicated and collection may not be possible in all circumstances. Thus, if issuing insurance companies were to cease business operations and there were insufficient amounts in the applicable state insurance guarantee fund to make payments in respect of a policy, this transaction would be adversely affected.

### Privacy Laws

The Buyer may lose contact with an insured after the purchase of a policy, causing a delay in ascertaining that an insured has died; or in obtaining the required documentation needed to claim the insured's death benefit. The escrow agent engaged by the Buyer subscribes to various databases that use public records and other information to track individuals, and has available services that provide notice if an insured's social security number is retired due to death so that it can begin the process of obtaining a death certificate and arranging for the payout of the policy. Despite these various services, it is still possible to lose contact with an insured, making any additional updates of medical condition for the insured impossible. Consequently, the Buyer could incur substantial unplanned expenses in locating a missing insured (such as the need to hire a private investigator to confirm the death of the insured) and could experience substantial delays in collecting death benefits, which would affect the value of the policy held by the Buyer. However, loss of contact with the insured does not invalidate the Buyer's beneficial rights in the policy. Any such loss of contact could possibly cause a delay in obtaining a death certificate for the insured, thus delaying the payout of benefits on the policy.

Buyer                      Co-Buyer

### **Bankruptcy**

The Buyer's rights to scheduled Payments may be adversely affected if the Seller becomes a debtor in a case under the Bankruptcy Code. While there are certain protections put into place (including security interests, contract language, and others) to protect the Payments due the Buyer, no assurance can be made that the protections will be upheld in court. Further, Sellers can file for full discharge bankruptcies every seven (7) years; therefore cases that extend beyond seven (7) years increase the risk of bankruptcy discharge. Additionally, Sellers may file for Chapter 13 bankruptcy and the contracted amount of Payments may be reduced by the Court in such actions.

### **Criminal Activity**

Certain federal retirement and disability benefits have provisions that cease benefits during an incarceration in excess of six (6) months. Additionally, restarting benefits after a period of incarceration is not automatic. Despite reviewing a previous criminal history of a Seller, Buyers run the risk that Sellers may at some point commit unforeseen or unexpected criminal activities in the future that will affect the Payments.

### **Garnishment**

The IRS and state taxing authorities have the ability to garnish pension income Payments from the Seller. Additionally, certain guaranteed educational loans may also be garnished from these income streams. In order to reduce the possibility of the purchased Payments from being garnished, all Sellers must submit a credit report less than three (3) months old as part of the Fulfillment Kit. Those reports should be carefully reviewed in order to verify that there are no federal or state tax liens levied against the Seller prior to closing; however, this does not prevent future tax liens from occurring and thereafter affecting the Payments. As protection, the amount of pension income a Seller may sell of their entire benefit amount is typically limited to 75%, since in the event of a garnishment the amount of the pension that is traditionally garnished is up to 25% of the total.

### **Equitable Division**

Pensions are often subject to equitable division in the event of divorce. All Sellers must disclose their marital status. Despite these procedures, a Seller could improperly represent their marital status. If a Seller is married or separated, s/he is required to have the spouse disclaim any interest in the Payments during the contract period.

### **Length of Payments**

In addition to the risk of bankruptcy, the longer the purchased term of Payments the higher the risk of default for any number of the reasons listed above. The greater potential of return in longer term payment purchases is proportional to the risk of default.

### **Active Duty**

If an individual returns to active duty after receiving VA compensation, s/he is not eligible to receive VA compensation or benefits for the duration that s/he is on active duty. Eligibility is restored once s/he is no longer on active duty.

### **Overpayment**

If an individual goes on active duty after receiving VA compensation, s/he does not have to repay money received while not on active duty. However, if VA payments were mistakenly received while on active military duty, the VA would have a right to return of those funds and that could affect future Payments.

### **Private Party Contracts**

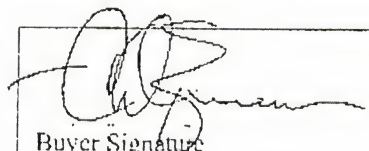
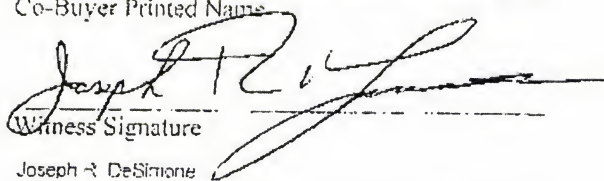
You may wish to purchase a private party contract that could mitigate specific defined risks. These private party contracts also carry risks. Those include, but are not limited to, that the company could go out of business or not have sufficient funds to pay their liabilities. Thus, if the private party contract company was to cease business operations and/or there were insufficient funds to make payments in respect to the contracts, your transaction could be adversely affected.

Buyer                      Co-Buyer



I hereby attest that I have read and fully understand the risks as disclosed above and further understand that certain risks may still persist that are unknown to Performance Arbitrage Company, Inc. ("PAC, Inc."), its Distributors, and/or other professionals engaged by them at this time. I also understand that this disclosure represents only certain known risks at this time and that those may change in the future. I understand that all risks cannot be eliminated. All decisions I make concerning this purchase are made with knowledge of the aforementioned known and unknown risks. As further consideration for this transaction and the services I have received from PAC, Inc., its Distributors, and/or other professionals engaged by them, I agree to hold PAC, Inc., its Distributors, and/or other professionals engaged by them, their principals, legal advisors, agents, affiliated companies, and assigns harmless for such known and unknown risks associated with this product which I may later experience.

WHILE EFFORTS HAVE BEEN UNDERTAKEN TO MINIMIZE THE RISK TO BUYER, BUYER UNDERSTANDS THAT UNKNOWN AND OTHER UNIDENTIFIED RISKS EXIST AND PERSIST AND THIS IS NOT A GUARANTEED PRODUCT.

|  |                   |
|--|-------------------|
| <br>Buyer Signature     | 3/24/2017<br>Date |
| Charles Zimmerman, as POA<br>Buyer Printed Name  |                   |
| _____<br>Co-Buyer Signature  | _____<br>Date     |
| _____<br>Co-Buyer Printed Name   |                   |
| <br>Witness Signature | 3/24/2017<br>Date |
| Joseph R. DeSimone<br>Witness Printed Name   |                   |

